**PUBLIC PROSECUTOR**

**v.**

**DATO' MOKHTAR HASHIM & ORS.**

HIGH COURT MALAYA, KUALA LUMPUR
HASHIM YEOP SANI FJ
[FEDERAL TERRITORY CRIMINAL TRIAL NO. 9/1982]
5 MARCH 1983

***CRIMINAL LAW AND PROCEDURE:*** *Security cases - Murder - Whether Court obliged to call upon accused to enter on his defence unless the prosecution has proved a prima facie case - Evidence was partly direct and largely circumstantial.*

***CRIMINAL LAW AND PROCEDURE:*** *Alibi - Credibility of the witness involved.*

***CRIMINAL LAW AND PROCEDURE:*** *Cautioned statement - Voluntariness - Whether a mere possibility that the statement was not voluntary is sufficient to reject it - Question of probability that it was not voluntary - Effect of - Whether a man can be convicted on the confession of another.*

***CRIMINAL LAW AND PROCEDURE:*** *Defence - Test to apply - Whether the defence had cast a doubt on the truth of the prosecution story.*

***EVIDENCE:*** *Expert evidence - Firearms identification expert - Distinction between firearms identification expert and a ballistics expert.*

On 13 July 1982, the Federal Minister of Culture, Youth and Sports, Dato' Mokhtar Hashim and four others were charged in the High Court, Kuala Lumpur in furtherance of a common intention of all with the murder of the former Speaker of the Negeri Sembilan State Legislative Assembly, Dato' Mohd. Taha bin Talib, an offence punishable under s. 302 of the Penal Code read with s. 34 of the same Code. The offence was alleged to have been committed on 14 April 1982 at or about 1.30a.m. at Kampong Seri Asahan, Gemencheh, in the District of Tampin, Negeri Sembilan i.e. 7 days after nomination day for the Federal and State General Elections 1982 which were held on 22 April 1982. The evidence relied on by the prosecution was partly direct and largely circumstantial.

On 14 April 1982 at about 6.30a.m. the family members of the deceased found near the gate of the deceased's house in Kampong Seri Asahan, the dead body of the deceased. A police report (P3) was then lodged at the Gemencheh police station. Police arrived at the scene and the deceased was found to have three gunshot wounds. Only two empty shells, however, were recovered from the scene (B and B1). The body was then taken to the mortuary in Tampin for post mortem. During autopsy one slug was extracted from the brain of the deceased but the slug was dented. Another bullet, bloodstained but whole was discovered when it fell from the folds of the sarong of the deceased while the doctor (PW3) was turning the body on the autopsy table. These became evidence bullets A and A1 (P18, P19). The third bullet was shown in the x-ray lodged in the thigh of the deceased which PW3 had refused to extract although the Investigating Officer (PW2) had insisted as PW3 found that to extract the bullet from its position would require amputation and mutilation of the thigh.

All .32 pistols and revolvers in the State of Negeri Sembilan were called up for surrender by the police since the calibre of the evidence bullets was .32 including the pistol of the first accused as he was in the State and in particular in the Gemencheh area during the material time. All these guns were testfired and the expended bullets and shells (P27 - P87) were sent

to the Government chemist for examination including the semi-automatic Walther pistol of the first accused (P88) and the expended bullets and shells from it (P89A) and (P89B) and the chemist (PW9) came to a conclusion that evidence bullets A & A1 and casings B & B1 had been fired from automatic pistol (P88) belonging to the first accused.

By virtue of the powers vested with the Attorney-General under the provisions of Reg. 2(2) of the Essential (Security Cases) Regulations 1975, the Attorney-General certified that the commission of the said offence affected the security of the Federation and therefore the case was dealt with and tried as a security case.

The prosecution closed its case after calling 31 witnesses, one witness, (PW30), was impeached. The evidence on which the whole case for the prosecution depended was classified as follows:

(a) the evidence of cause of death

(b) evidence of the chemist (PW9)

(c) the cautioned statement of the first accused Dato' Mokhtar Hashim (P119)

(d) evidence of the identification witnesses, namely:

Atun bin Ali (PW18), a "dukun" (medicine man) and doing some kampung work who claimed to have seen and identified the four accuseds and Aziz Tumpuk (now deceased) at about midnight on 13 April 1982 while he was returning home walking along an estate road on a moonlight night and who according to him they were no strangers to him;

Sudin bin Sharif (PW22) 64 years old, the father-in-law of the deceased;

Datin Norsiah bte. Othman (PW23), widow of the deceased;

Liah bt. Nahu (PW25), 59-year old lady whose house is close to the deceased's house across the road;

Mohd. Nor bin Isa (PW21), a 41-year old Director of Companies who had served the deceased as personal secretary cum personal representative when the deceased was head of UMNO Bahagian Tampin from 1960 to 1980;

The Director of Topographical Survey (PW26) who had made a study of astronomy and the Asst. Director of climatological condition of the meteorological services (PW27) had corroborated that the night was a moonlight night.

(e) the cautioned statement of the third accused Rahmat bin Satiman (P101) which the defence had challenged the voluntariness of the statement.

***Cause of Death***

PW3, Dr. Harcharan Singh, who performed the post mortem had found the cause of death to be shock and haemorrhage due to gunshot wounds.

On the totality of the evidence against the second and fourth accuseds Nordin Johan and Aziz Abdullah respectively excluding the confession (P101) the Court found that a *prima facie* case had not been established against them and accordingly acquitted and discharged them. Nevertheless the Court found that a *prima facie* case had been made out against Dato' Mokhtar Hashim, the first accused and Rahmat Satiman, the 3rd accused and called upon them to enter their defence. The question at the end of the defence was: did the evidence of the defence create a reasonable doubt on the truth of the prosecution story?

In substance, the defence of Rahmat Satiman, the 3rd accused consisted of the following parts:

(a) the request for review of the question of voluntariness of his cautioned statement (P101);

(b) the legal consequences of the impeachment of Rahmat Satiman;

(c) the alibi; and

(d) the testimony of Mr. Fassnacht (DW43) a self-styled "private firearms expert" from USA who was called to challenge the evidence of Mr. Gee (PW9), the Government Chemist.

The defence in requesting the Court to review the ruling on the voluntariness of P101 contained in a written decision dated 31 December 1982 relied on the grounds *inter alia* on the new allegations made by Rahmat Satiman against the police in his evidence in the witness box in the main trial. To establish his abili Rahmat Satiman brought 14 witnesses (DW29 - DW42) covering the period 13 April to 14 April and places like Muar, Pontian and Johor Bahru.

The defence for Dato' Mokhtar was much more intricate than that of Rahmat Satiman. His evidence was divided into five separate parts namely:

(a) His alibi;

(b) The attack on Atun's (PW18) evidence;

(c) The attack on Sudin's and Datin Norsiah's (PW22 and PW23) evidence;

(d) The contention that the prosecution had not discharged its burden of proving that Dato' Mokhtar was in custody and control of his gun (P88) at all times during the material period; and

(e) The attack on Mr. Gee's (PW9) evidence.

He brought 25 witnesses to support his alibi which covered the period and times mentioned in P101, namely 8, 10, 11 & 13 April 1982 through to the early hours of 14 April 1982. The vital part of his alibi was the alibi for the night of 13 April 1982 up to the early hours of 14 April 1982. The cautioned statement of Dato' Mokhtar was admitted as Exhibit P119, its voluntariness was not challenged and during submission its truth was admitted.

**Held:**

**[1]** Having regard to the prosecution evidence adduced the Court found that a *prima facie* case had not been established against Nordin Johan and Aziz Abdullah the second and fourth accuseds respectively which, failing their rebuttal, would warrant their conviction and accordingly they were acquitted and discharged.

**[2]** The Court however found that a *prima facie* case had been made out against Dato' Mokhtar Hashim, the first accused and Rahmat Satiman, the third accused and called upon them to enter their defence.

**[3]** At the conclusion of the trial-within-a-trial, the Court found no satisfactory evidence even to suspect that there was threat, inducement or promise used on the third accused. Consequently, the Court was satisfied that the statement was voluntary and ruled the statement to be admissible in evidence.

**[4]** All the new and serious allegations to review the ruling on the voluntariness of P101 the cautioned statement should, if true, have come out during the intensive and severe cross-examination he underwent in the trial-within-a-trial. The Court was therefore more inclined to

the view that all these allegations were merely afterthoughts. Therefore, the Court did not consider that any of the grounds raised constituted sufficient basis to review the question of voluntariness of P101.

**[5]** The voluntariness of the cautioned statement of Rahmat Satiman, the 3rd accused (P101) was affirmed and the truth of P101 was affirmed in so far as it related to both the accused.

**[6]** The evidence of Mr. Fassnacht (DW43) was neither acceptable nor wholesome enough to cast any doubt on the veracity of Mr. Gee's (PW9) evidence.

**[7]** The veracity of the evidence of Mr. Gee, the chemist stands unchallenged and that means slugs A and A1 either of which singly could have caused the death of the late Dato' Taha came from the Walther automatic pistol (P88) belonging to Dato' Mokhtar who was in custody and in control of it at all material times.

**[8]** The question whether an alibi was satisfactorily established or not depends in the final analysis on the credibility of the witness involved. It is not incorrect to say that an alibi is as good as its witness. Thus looking at the evidence objectively Rahmat Satiman the 3rd accused had failed on the balance of probability to establish his alibi for the night of 13 April 1982 to the early hours of 14 April 1982.

**[9]** It was the finding of the Court that the evidence of alibi of both the accuseds was completely false and fabricated.

**[10]** The defence evidence as a whole had not succeeded in creating any doubt on the truth of the prosecution story. It was an inescapable conclusion that the charge had been proved beyond reasonable doubt against both the accuseds and any other finding would be contrary to the weight of evidence.

*[1st and 3rd accuseds found guilty, convicted and sentenced to death. 2nd and 4th accuseds acquitted and discharged without their defence being called.]*

**Cases referred to:**

*Johnson Tan Han Seng v. PP [1977] 2 MLJ 66*
*Yaacob v. PP [1966] 1 MLJ 67*
*PP v. Law Say Seck & Ors [1971] 1 MLJ 199*
*Hem Raj v. The State of Ajmer [1954] AIR 464*
*Pyare Lal v. State of Rajasthan [1963] AIR 1096*
*Irfan Ali v. State [1970] Criminal Law Journal 608*
*PP v. Sihabduin & Anor. [1980] 2 MLJ 273*
*R. v. Silverlock [1894] 2 QB 766*
*PP v. Muhamad bin Sulaiman [1981] FC Crim App 27*
*Husdi v. PP [1980] 2 MLJ 80*
*Raymond Turnbull and Ors. [1976] 63 Cr App R 132*
*R. v. Robson and R. v. Harris [1972] 1 WLR 651*
*Muthusamy v. PP [1948] 14 MLJ 57*
*R. v. Morgan [1981] 2 NZLR 164*
*Herchun Singh & Ors. v. PP [1969] 2 MLJ 209*
*Osman & Anor v. PP [1967] 1 MLJ 137*
*Yap Sow Keong & Anor. v. PP [1947] MLJ 90*
*Osman & Anor. v. PP [1968] 2 MLJ 137*
*R. v. Watson [1980] 2 All ER 293*
*Khoon Chye Hin v. PP [1961] 27 MLJ 107*
*Mahbub Shah v. King-Emperor [1945] IA Vol LXXII 148*
*Gunadhar Das v. State [1952] AIR Cal 618*
*Yap Chai Chai & Anor. v. PP [1973] 1 MLJ 219*

*Bhuboni Sahu v. The King [1947] AIR SC 257*
*Yusoff & Anor. v. PP [1956] 22 MLJ 47*
*Ong Kim Piau v. PP [1956] 22 MLJ 47*
*Su Ah Ping v. PP [1980] 1 MLJ 75*
*Haw Tua Tau v. PP [1981] 2 MLJ 49; [1981] CLJ (Rep) 11*
*Muniandy & Ors. v. PP [1966] 1 MLJ 258*

**Legislation referred to:**
Arms Act 1960, s. 4(5)
Criminal Procedure Code, s. 112
Evidence Act 1950, s. 30
Essential (Security Cases) Regulations 1975, reg. 2(2), 17, 21
Penal Code, ss. 34, 302

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*For the 3rd accused - Manjeet Singh (Lawrence Perera with him)*
*For the 4th accused - James Ponniah (Sahadevan with him)*

**Appendix A**

*Ruling in Trial-Within-Trial to Determine the Voluntariness or Otherwise of the Cautioned Statement-ID101*

The prosecution is seeking to admit a cautioned statement of Rahmat bin Satiman, the third accused, which was recorded on 23 June 1982 by Ag. DSP Bashir bin Ali. This statement was recorded at the Gombak Police Station where the third accused was being detained. The defence is challenging the voluntariness of the statement.

For the purpose of this entire trial the law governing the admissibility of a statement is to be found in reg. 21 of the Essential (Security Cases) Regulations 1975 as amended by PU(A) 362 of 75. That regulation provides that a statement made by an accused person orally or in writing to any person shall be admissible in evidence notwithstanding any or all of the situations described in paras. (a), (b), (c), (d), (e), (f), (g), (h) and (i) of the regulation. In other words, such statement would ordinarily be admissible notwithstanding *inter alia* the accused was in police custody or that he made the statement to a person in authority or in the course of police investigation or that he made the statement with or without a caution being administered to him or that the statement would incriminate him. However, the Federal Court in *Johnson Tan Han Seng v. PP* [1977] 2 MLJ 66 required that the statement must in any case be voluntary.

Where a decision has to be made as to whether a statement is free and voluntary a question of fact is involved; and that question must be decided like any other questions of fact, on the evidence. See also *Yaacob v. PP* [1966] 1 MLJ 67.

In my opinion the rule in reg. 21(1) is that a statement should be excluded if it is shown or made to appear to the Judge that the statement was not voluntary. It does not however require the defence to prove beyond reasonable doubt of the existence of threat, inducement or promise. A mere possibility that the statement was not voluntary is however insufficient to warrant its rejection but a probability that the statement was not voluntary would suffice to make the statement inadmissible. See also *PP v. Law Say Seck & Ors.* [1971] 1 MLJ 199. According to Woodroffe and Ammer Ali a "well grounded conjecture is sufficient." But a mere "bald assertion" by the prisoner that he was threatened, tortured or that inducement was offered to him should not be accepted as true **without more** (emphasis mine) - see *Hem Raj v. The State of Ajmer* [1954] AIR SC 464.

What the defence is required to prove in this case is as described in the judgment of the Supreme Court of India in *Pyare Lal v. State of Rajasthan* [1963] AIR 1096 as follows:

> Therefore the test of proof is that there is such a high degree of probability that a prudent man would act on the assumption that the thing is true. But under s. 24 of the Evidence Act such a stringent rule is waived but a lesser degree of assurance is laid down as the criterion. The standard of a prudent man is not completely displaced, but the stringent rule of proof is relaxed. Even so, the laxity of proof permitted does not warrant a Court's opinion based on pure surmise. A *prima facie* opinion based on evidence and circumstances may be adopted as the standard laid down. To put it in other words, on the evidence and the circumstances in a particular case it may appear to the Court that there was a threat, inducement or promise, though the said fact is not strictly proved. This deviation from the strict standards of proof has been designedly accepted by the Legislature with a view to exclude forced or induced confessions which sometimes are extorted and put in when there is a lack of direct evidence. It is not possible or advisable to lay down an inflexible standard for guidance of Courts, for in the ultimate analysis it is the Court which is called upon to exclude a confession by holding in the circumstances of a particular case that the confession was not made voluntarily.

It is difficult to draw clear guidelines on what the Court should do in all cases where a question arises as to the voluntariness of a statement of an accused person. Facts differ from case to case. In the ultimate analysis each case has to be determined on its own merits. It has been accepted as sound principle that even where circumstances have been shown by the defence which opened a statement to serious criticism and thereby bringing its voluntariness gravely into question the Court could still hold that a statement is voluntary if after appreciating the importance and significance of those circumstances the Court can find that there are other facts and circumstances to completely assure the voluntariness of the statement. This principle is referred to in *Irfan Ali v. State* 1970 Criminal Law Journal @ p. 608.

The prosecution called Ag. DSP Bashir, the recording officer. This officer testified that the statement, ID101, was a free and voluntary statement made by Rahmat Satiman and he never forced or in any way induced Rahmat Satiman to make the statement. He testified that he administered the caution and explained the proviso of s. 112 of CPC to the accused and he said the accused understood it. No threat or promise was used. According to Ag. DSP Bashir, Rahmat Satiman looked very relaxed and narrated the statement spontaneously and continuously with only very few questions from him to clarify certain points. In his cross-examination by Mr. Manjeet Singh, Ag. DSP Bashir said "He spoke without interruptions. Only when I do not hear some of the words I asked. Not strange he spoke non-stop." The defence for their challenging evidence called Rahmat Satiman himself, Senior Assistant Commissioner Yahya bin Yeop Ishak, Insp. Aziz bin Yeop, the Area Inspector of Gombak Police Station and Mr. Deva Dass, a psychiatrist. For the purpose of adducing evidence in rebuttal the prosecution called Insp. Badaruddin, seven detectives and Ramlan bin Selamat, the man operating the canteen of the Gombak Police Station during the material period.

There are copious testimonies resulting from intensive and severe cross-examinations of almost all these witnesses. But the grounds of the defence as to the involuntariness of the statement may be summarised as follows:

(1) It is contended by the defence that the statement, ID101, was not only involuntary but merely a reproduction of what had been coached to Rahmat Satiman by his interrogators. According to the defence Rahmat Satiman had been forced to memorise certain events and as a result of pressure imposed on him he narrated the events in the statement like a parrot. It is said that the coaching was done by the interrogation team with the aid of photographs and scripts.

(2) It is also the defence story that Rahmat Satiman was always forced to dress only in his underwear and was frequently asked to sit for long hours and to stand under a fan running at full speed. He was also prevented from performing his prayers. He was denied food and sleep intermittently. He was humiliated and abusive words were used against his wife and daughter. He also alleged to have been slapped by Insp. Badaruddin whenever he (the accused) asked any question. He was also asked to crawl under the table and made to march in the conference room for long hours. In other words it is the contention of the defence that Rahmat Satiman was prior to 23 June 1982 subjected to generally inhuman treatment by Insp. Badaruddin and his seven detectives and frequently deprived of sleep and food so as to break his will.

(3) Prof. Deva Dass, a psychiatrist, was brought by the defence to show that under certain pressure a person would do just as the third accused had done in this case, that is reproducing what he had been tutored or coached which in fact reflected the state of mind of the third accused as a result of all those acts allegedly perpetrated on him by the members of the interrogation team.

I will now deal with the specific allegations of the defence.

***(1) Was Rahmat Satiman at any time deprived of food and drinks?***

Here we have the testimonies of Rahmat Satiman himself who said that by the second week his health and mind was disturbed because he had not enough sleep and food. Rahmat Satiman also alleged that food was served to him by members of the interrogation team who sometimes snatched his food away when he was about to eat or mashed his food before handing the food over to him. As a result he could not eat the food. He further stated that during the second week he was given food "fit for a dog". The defence also called Insp. Aziz, Gombak Area Inspector, who also produced the food register, P106. According to him it was the canteen caterer (Ramlan bin Selamat) who prepared food for prisoners on his order and the food register is maintained for this purpose. From the register Rahmat Satiman was given food every day and on one occasion, that is 4 June 1982 the lunch was provided by Insp. Aziz himself. The caterer was also called to give evidence by the prosecution. He corroborated Insp. Aziz and testified further that he himself was responsible for serving food to all prisoners and explained the procedure. He would first go to the Enquiry Office and then from there he was accompanied by a constable who opened the gates of the lock-up for him to serve the food. According to him he served food to Rahmat Satiman in the conference room a number of times. The defence seeks to discredit both the canteen caterer and Insp. Aziz by referring to the entries in the station diaries which show that meals were ordinarily served by police constables. Apart from the fact that I found at the end of the proceeding that the station diaries, D105 A-E, are not really 100% reliable, it is difficult for me to accept that it is part of the duty of a police constable to serve food especially where a caterer is available as in this case. I have no reason to doubt Insp. Aziz's testimony. Thus I find that the allegation that Rahmat Satiman was deprived of food cannot be accepted.

***(2) Was Rahmat Satiman always dressed only in his underwear?***

Many witnesses, both called by the defence and called by the prosecution, testified that they always saw the accused properly dressed either in the lock-up or in the conference room. This is clearly seen in the evidence of Insp. Aziz (who was not concerned at all with the interrogation of the accused), the canteen caterer and all the detectives. Insp. Badaruddin maintained throughout that the accused had always been "well dressed".

Most important evidence on this point is when the accused was brought to see SAC Yahya on 7 June 1982. SAC Yahya came to the Gombak Police Station at about 3.15 p.m. and he met the accused in the conference room and he then took the accused to Insp. Aziz's office. He was properly dressed, complete with songkok. However, he alleged that Insp. Badaruddin and his men asked him to bathe and shave and to dress properly before meeting SAC Yahya. I find this difficult to believe because if Insp. Badaruddin was under the direction of SAC Yahya with certain instructions, what is the advantage to be gained by showing to SAC Yahya that Rahmat Satiman was clean and normally dressed? Therefore this allegation is also without basis.

***(3) Was or was not Rahmat Satiman prevented from performing his prayers?***

Rahmat Satiman himself admitted that he was a God fearing man with a good religious background. He also said he prayed five times a day before his arrest but he was prevented from praying while in detention. All the detectives denied they prevented him from performing his prayers. In fact three detectives including Santharaj (a non-Malay) testified they escorted him to take his ablutions before prayers. The canteen caterer saw Rahmat Satiman praying several times. Insp. Badaruddin maintained that he never prevented Rahmat Satiman from praying and he said he knew Rahmat Satiman was a pious man who liked to pray. This was especially so after Rahmat Satiman saw and spoke to SAC Yahya on 7 June 1982. During his interrogation with Rahmat Satiman Insp. Badaruddin said he also talked about general matters, about religion and about cars (as Rahmat Satiman was a mechanic) and also of family matters. Most of the detectives testified that if would be sinful to prevent a person from performing his prayers. This is common knowledge to all Muslims and it is not unreasonable to believe them in this regard. Therefore I also find it difficult to believe that Rahmat Satiman was in fact prevented from performing his prayers while in detention.

***(4) Was Rahmat Satiman always deprived of sleep?***

Rahmat Satiman testified that the method employed on him by his interrogators was that he was taken out for interrogation mostly at unreasonable hours and after long periods of interrogation he would then be sent back to his lock-up. But when he had hardly managed to get to sleep his interrogators would take him out of the lock-up again for interrogation. For this the defence relied on certain entries in the station diaries, D105. It is not disputed that there were times according to the entries in the station diaries that Rahmat Satiman was put back into the lock-up in the early hours of the morning and taken out again as early as 40 minutes afterwards. Such occasions are clearly recorded on certain dates like 1 & 4 June 1982. I have said earlier that on the whole I found the station diaries quite unreliable in the sense that the recording would appear to have been done in a slipshod manner. Two clear examples of this is to be found in Entry 3122/82 which was referred to during the reexamination of Insp. Badaruddin. This entry was dated 9 July 1982 recorded at 9.45p.m. where it is noted that "T/KPD Gombak, (that is Dy. Area Inspector Gombak) allowed the accused to return to the lock-up. It is confirmed in evidence that there is no such officer in Gombak Police Station. A second example is to be found in the recording of the vehicle which transported Santharaj and the accused from Gombak Police Station to Jalan Bandar Police Station on 10 July 1982. According to his evidence Santharaj used motor car no. BX 3376 whereas the entry in the station diaries recorded the vehicle as motorcar no. BAY 8786. It is not disputed that the vehicle used belongs to Santharaj's brother-in-law, BX 3376, but the station diaries recorded another number.

In the station diaries whenever the accused was taken out of the lock-up it was always recorded as for the purpose of "soalsiasat", that is interrogation. Insp. Badaruddin explained that he was free with Rahmat Satiman and whenever the latter wanted to rest he would leave him. The short periods in the lock-up were for record purposes. There is also abundant evidence to show that in fact although Rahmat Satiman was outside the lock-up and in the conference room for long periods, there were occasions when he was seen lying on a bench in the conference room. These can be found specifically in the evidence of Insp. Aziz (who was not a member of the interrogation team) and Ramlan Selamat, the canteen man. Again I am unable to honestly say that this allegation of the accused can probably be true.

***(5) Was Rahmat Satiman subjected during his detention prior to 23 June 1982 to generally inhuman treatment?***

To answer this question properly a number of factors have to be borne in mind. Firstly the nature of instructions received by Insp. Badaruddin on his functions. Secondly the fact that Rahmat Satiman was detained under the ISA and therefore a political detainee and not a criminal detainee. Thirdly as the learned Attorney-General suggested, and I agree with him, the status and background of the accused.

First, the instructions given to Insp. Badaruddin by his superior, SAC Yahya. According to Insp. Badaruddin on 30 May 1982 he was called by SAC Yahya at about 10.30 a.m. whereupon he received instructions to interview one Rahmat Satiman at the Balai Polis Gombak. His instructions were to obtain "security intelligence" and "public reaction and security implication" in the Tampin district and also in the State of Negri Sembilan as a whole arising from the death of Dato' Taha. To assist him he was given six detectives from Kelantan and Trengganu chosen not by either SAC Yahya or Insp. Badaruddin but by the OCCI of the two States. The six detectives were taken at random from Kelantan and Trengganu where according to SAC Yahya police personnel could be spared. These six detectives were on the following day joined by the seventh detective, Santharaj, from Bukit Aman to enable two officers to be on duty at a time and Cpl. Mohd. Ismail to prepare the roster.

According to Insp. Badaruddin these detectives were instructed by him expressly to do only guard and escort duties for the duration that the third accused was under his charge. According to SAC Yahya his instructions to Insp. Badaruddin were to go into general security intelligence arising from the incident but did not however give Insp. Badaruddin any briefing nor how to carry out his work. He just told Insp. Badaruddin to report to him from time to time. He said he chose Insp. Badaruddin because he found him to be a suitable person for the job. But both said that intelligence was "non-operational" meaning not of an urgent nature.

Insp. Badaruddin and all the detectives testified that while the functions of Insp. Badaruddin were to interview or interrogate the accused, the functions of the detectives were to guard and escort the third accused. For this purpose the detectives worked on a two-hourly shift and they slept and rested in the surau of the Gombak Police Station.

It is the contention of the defence that none of the police personnel was telling the truth and that what actually transpired was that the instructions to Insp. Badaruddin was to forcibly extract as much information and as quickly as possible and for this purpose he was given a team of seven detectives experienced in intensive interrogation work. In fact according to Mr. Manjeet Singh the nature of the interrogation administered on Rahmat Satiman was not unlike the Spanish inquisition.

If the defence contention is true the team would, with due respect, hardly be a suitable one. It is not challenged that although Insp. Badaruddin himself was from Bukit Aman as also was Santharaj, the rest of the detectives were chosen at random from Kelantan and Trengganu. To perpetrate intensive interrogation of the nature described by the defence would require a team of highly efficient personnel. From his own admission Insp. Badaruddin who may be efficient would seem to lack sufficient experience. In his testimony he said he had never interrogated, never prosecuted in Court and never been a witness in Court. As regards the detectives the position would seem to be worse. Santharaj has only been six months in D6 in Bukit Aman. Prior to that he was on beat duty and general duties in crime prevention. D/Const. Abdul Halim bin Jusoh was taken from the Anti-Narcotics Division in Trengganu and has been detective only for 1½ years. DPC Nasaruddin bin Idrus was taken from the Narcotics Division, Trengganu and has been a detective for only more than a year. Prior to that he was a police driver. D/Const. Mohd. Zainal bin Abdul Rahman was taken from CID Kota Bahru, Kelantan. In cross-examination he said his duties in headquarters in Kota Bahru was in charge of records only. Out of 17 years in the police force he spent 13 years on beat duty in Kelantan. Const. Hussein bin Hamzah was taken from CID Rantau Panjang, Kelantan. He was attached to D4 Kelantan which means dealing in serious crimes, that is smuggling and theft. He said he had no experience in questioning people. Then there were Det. L/Cpl. Mohd. bin Ali and D/Cpl. Mohd. bin Ismail. In my view they do not constitute an impressive team for the sort of interrogation as alleged by the defence. In my opinion it is most unlikely that the interrogation team as suggested by the defence existed at all.

Because Rahmat Satiman was in fact detained under the Internal Security Act it is also highly improbable that he would be treated like a criminal. Therefore it follows that it would highly be improbable he was subjected to any inhuman treatment.

Rahmat Satiman is 54 years old and considered as an elderly man by Insp. Badaruddin and the detectives. I agree with the learned Attorney-General that in an Asian society there is still respect given to the elderly man by the younger people and this has to be borne in mind in considering the relationship between Insp. Badaruddin and Rahmat Satiman. Apart from this Rahmat Satiman is not an ordinary man. He has retired from the army after 29 years of service and he was a Sgt. Major II before he retired. Rahmat Satiman is physically better built than Insp. Badaruddin and he looks a serious man as he himself admitted. To show that Rahmat Satiman is the sort of man who can take no nonsense one has only to look at one of the early entries with regard to his detention in the station diaries of the Gombak Police Station. In Entry No. 7890 dated 30 May 1982 at 12.20 p.m. it is recorded that Rahmat Satiman informed the police that he refused to have his food until he was informed of the offence for which he was detained. Therefore he knew his rights. After all he was the village headman before his arrest and a man with considerable experience. This fact is important to consider why he failed to inform anybody at all if he was in any way ill-treated by Insp. Badaruddin and the detectives. Surely he knew that SAC Yahya was superior to Insp. Badaruddin. Insp. Aziz, who was the Gombak Area Inspector, was not connected with the interrogation. Finally, it is unthinkable that he did not know when he met the CID chief himself, Dato' Abdul Rahman at Jalan Bandar Police Station on 2 July 1982, that this was a high ranking police officer to whom he could make a complaint - but he did not. I disagree that *PP v. Law Say Seck & Ors.* is a complete answer to the failure of Rahmat Satiman to lodge a complaint. One would not expect Rahmat Satiman to lodge a police report in the Gombak Police Station if he was ill-treated. But having the opportunity to meet a very high ranking police officer elsewhere is a different matter entirely.

My conclusion on this question is that it is highly improbable that Rahmat Satiman was ill-treated during his detention.

***(6) Was Rahmat Satiman coached to make the statement?***

I do not propose to deal in length with this question because looking at the evidence as a whole it would seem to me that the allegation is too far fetched to be accepted. If I may recapitulate the instructions from SAC Yahya to Insp. Badaruddin was to obtain general security intelligence and in fact Rahmat Satiman was detained under the ISA. According to his evidence Insp. Badaruddin said he knew nothing about the events leading to the murder of Dato' Taha until after he was informed by Rahmat Satiman. In fact before Rahmat Satiman drew the plan of the house (P107) Insp. Badaruddin did not know where was Taman Clonlee in Tampin where a meeting was supposed to have been held between Rahmat Satiman, the first accused and others.

I also agree with the suggestion of the learned Attorney-General that it would be preposterous to think that senior police officers like SAC Yahya and Insp. Badaruddin could concoct a story which implicated a Minister of the Government. Finally the contents of the statement itself would show that the details are so intricate that none but the participators would be able to narrate the events in that manner.

This leaves only the testimony of Dr. Deva Dass, the psychiatrist. I think there can be no quarrel as to the theories he submitted on human behaviour under pressure. But the study of human behaviour and the human mind is not an exact science. Even if some theories have been proved true in practice he admitted he had not examined Rahmat Satiman personally. In other words the testimony of Dr. Deva Dass does not take the defence anywhere. Rahmat Satiman had been detained for more than three weeks before Ag. DSP Bashir recorded his statement. The defence submission also stressed that the length of the detention immediately preceding the statement would be sufficient to stamp the statement as involuntary unless prolonged custody can be explained. I think with respect that this is too narrow an approach to take in a proceeding of this nature. It is true that the period of detention should be considered by the Judge. Other facts and circumstances should also be considered. In other words the totality of the evidence should be considered.

Our rule on the admission of confession is taken from English law. "Voluntary" means the statement has not been obtained by fear or prejudice or hope of advantage held out by a person in authority. The issue is basically one of fact. The approach is as described by Lord Hailsham in *DPP v. Ping Lin* [1975] All England Law Reports @ p. 182 as follows:

> The trial Judge should approach his task by applying the test enunciated by Lord Sumner in a common sense way to all the facts in the case in their context much as a jury would approach it if the task had fallen to them. In the light of all the facts in their context, he should ask himself this question, and no other: 'Have the prosecution proved that the contested statement was voluntary in the sense that it was not obtained by fear of prejudice or hope of advantage excited or held out by a person in authority or (where it is relevant, as is not the case on appeal here) by oppression?

To summarise, for the allegations by Rahmat Satiman we have only his evidence as against the evidence of the other witnesses called both by the defence and the prosecution. I concede there were inconsistencies in some of the testimonies of the police witnesses but these inconsistencies were not on material particulars.

Considering the evidence as a whole I can find no satisfactory evidence even to suspect that there was threat, inducement or promise used on the accused. Consequently I am satisfied that the statement ID101 was voluntary. In fact the sequence of events pertaining to the statement would seem to confirm its voluntariness. According to Insp. Badaruddin he was first informed of the events leading to the murder on 4 June 1982. He communicated this to his superior SAC Yahya. Rahmat Satiman subsequently narrated the same events to SAC Yahya on 7 June 1982. According to the prosecution the same statement was then taped on 9 June 1982. From then Insp. Badaruddin was directed to stop all questionings except to give SAC Yahya the "biodatas". Ag. DSP Bashir recorded the statement on 23 June 1982.

I therefore rule that the statement is admissible in evidence. This ruling settles the question of its admissibility but not its truth.

**Appendix B**

***Decision After Submissions at the end of Prosecution Case***

Because some vital issues of law and facts were raised during submissions by Counsel for the defence after the close of the prosecution case, I feel that a full review of the prosecution evidence is necessary at this stage. Although this is a security case the Court is not obliged to call upon any of the accused to enter on his defence unless the prosecution has proved a *prima facie* case - see *PP v. Sihabduin & Anor.* [1980] 2 MLJ 273.

The evidence relied on by the prosecution are partly direct and largely circumstantial. 7 April 1982 was Nomination Day for candidates for the general elections of 1982. The election campaign started after the nomination of candidates.

On the morning of 14 April 1982 i.e. about a week after Nomination Day at about 6.30 a.m. a dead body was found near the gate of the deceased's house in Kampung Seri Asahan. The family members of the deceased rushed to the scene and discovered that it was the body of the late Dato' Taha bin Talib, then Speaker of the Legislative Assembly of Negri Sembilan. A police report (P3) was then lodged at the Gemencheh police station.

Police personnel arrived at the scene and so also did a curious crowd. The deceased was found to have three gunshot wounds. Only two empty shells, however were recovered from the scene (B and B1). The body was then taken to the mortuary in Tampin for post mortem.

During autopsy one slug was extracted from the brain of the deceased but the slug was dented. Another bullet, bloodstained but whole was discovered when it fell from the folds of the sarong of the deceased while the doctor was turning the body on the autopsy table. These became evidence bullets A and A1 (P18, P19). The third bullet was shown in the x-ray lodged in the thigh of the deceased which the doctor (PW3) refused to extract although the Investigating Officer (PW2) insisted. PW3 refused because according to him to extract the bullet from its position would require amputation and mutilation of the thigh. Another reason which can be attributed to the doctor's reluctance to prolong the post mortem was the big crowd waiting outside the mortuary impatiently waiting to take the body away for burial.

Since the calibre of the evidence bullets was .32, all .32 pistols and revolvers in the State of Negri Sembilan were called up for surrender by the police including the pistol of the first accused on the grounds that he was in the State and in particular in the Gemencheh area during the material period. All these guns were testfired and the expended bullets and shells (P27 - P87) were sent to the government chemist for examination. Also testfired was the semi-automatic Walther pistol of the first accused (P88) and the expended bullets and shells from it (P89A and P89B) were examined by the chemist.

The chemist (PW9) did his examinations and then came to a conclusion that evidence bullets A and A1 and casings B and B1 had been fired from automatic pistol (P88) belonging to the first accused.

Ten people were arrested and apparently statements were taken from nearly 300 people. Finally five persons were charged. One died before the trial commenced.

Shortly before the death of the late Dato' Taha the UMNO Tampin Division had nominated Dato' Mokhtar Hashim as candidate for the Parliamentary seat of Tampin. This was accepted by the Party leadership. In the Tampin constituency there are four State seats. The Tampin UMNO Division (headed by Dato' Mokhtar Hashim) proposed two names for the State seat of Gemencheh. One of the two names proposed was Abdullah Ambik (PW30). The Party leadership, however, for reasons of their own, rejected both these names and nominated instead the deceased as candidate for the Gemencheh State seat. But the deceased's name had never been approved by the UMNO Tampin Division. It only stands to reason the first accused and his men were unhappy. There is evidence there had been friction between the deceased and Dato' Mokhtar Hashim and obviously this friction came to a head after Nomination Day. Events moved fast after that day.

The charge against all the four accused is that on 14 April 1982 at or about 1.30 a.m. at Kampung Seri Asahan, Gemencheh, in the district of Tampin, Negri Sembilan in furtherance of a common intention of all did commit murder by causing the death of one Datuk Mohamed Taha Talib thereby committing an offence punishable under s. 302 of the Penal Code read with s. 34 of the Code.

By virtue of his powers under the provisions of reg. 2(2) of the Essential (Security Cases) Regulations 1975, the Attorney-General certified that the commission of the said offence affected the security of the Federation and therefore the case is dealt with and tried in accordance with the provisions of these regulations.

The prosecution case technically commenced with the lodging of the first information report no. 325/82 (P3) at the police station in Gemencheh at 7.05 a.m. on 14 April 1982. The real drama however unfolded about a week before the report and that was on 8 April 1982 the day following the Nomination Day. This is clear in the evidence.

The prosecution closed its case after calling 31 witnesses. One witness, PW30, was impeached leaving the prosecution with 30 witnesses on whose evidence the prosecution claims to have established a *prima facie* case on the charge against all the accused. A number of these prosecution witnesses were formal police witnesses concerning the chain in evidence of certain exhibits. But the evidence on which the whole case for the prosecution depends may in my view be classified as follows:

(a) evidence of cause of death

(b) evidence of the chemist (PW9)

(c) the cautioned statement of Dato' Mokhtar Hashim (P119)

(d) evidence of the identification witnesses, namely Atun bin Ali (PW18), Sudin bin Sharif (PW22), Datin Norsiah (PW23), Liah bt. Nahu (PW25) and Mohd. Nor bin Isa (PW21)

(e) the cautioned statement of Rahmat Satiman (P101).

**(a) Cause of Death**

PW3, Dr. Harcharan Singh, who performed the post mortem found the following wounds on the body of the deceased -

(1) a circular gunshot entry wound 0.5 cm in diameter over the right temple.

(2) a circular gunshot entry wound 0.5 cm in diameter on the front of the left chest.

(3) entry wound 0.5 cm in diameter on the upper left thigh.

(4) exit wound 0.8 cm in diameter on the left side of the lower back of the body.

Cause of death was shock and haemorraghe due to gunshot wounds. The nature of the injuries sustained was such that PW3 was of the opinion that death would have occurred within minutes. Either one of the bullets (that went through the head and the one that went through the chest) would have caused the death.

**(b) Evidence of the chemist**

The opinion of witnesses possessing peculiar skills is admissible whenever the subject matter of enquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment without the assistance of an expert. Thus the opinion of these skilled witnesses are admissible in evidence including where the opinions rest on the personal observations of the witnesses themselves and on the facts within their knowledge. To qualify to give such evidence the witness must satisfy the Court that he is indeed an expert, that he is specifically skilled in the field of the enquiry carried out by him. An expert is one who is skilled in any particular art, trade or profession being possessed of peculiar knowledge concerning the same. The witness must have made a special study of the subject or have acquired special experience on the subject. A similar question arose in the case of *R. v. Silverlock* 1894 2 QB 766 @ 771 where handwriting was in issue, and of the person to give expert evidence Lord Russel of Killowen CJ, said -

> Is he peritus? Is he skilled? Has he an adequate knowledge?

The same test was applied by Suffian LP in *Public Prosecutor Muhamad bin Sulaiman* [1981] FC Crim App 27 where the Lord President said:

> The only question was, is Mr. Lum peritus, is he skilled, is he skilled in determining whether a particular bullet has gone through the barrel of a particular rifle. He need not become so skilled in any particular way nor by special study nor professionally. It is enough if he has had sufficient experience, sufficient practical experience, to acquire the necessary skill, so that he has adequate knowledge.

If a witness is not skilled the Judge will direct that his evidence be disregarded. But once it is determined that his evidence is admissible the rest is merely a question of value or weight which will be that which the Court will attach to it as the Court believes the witness to be peritus.

It is also said that the evidence of experts is nearly always a "weak type" of evidence and to be received with caution. This is because human judgment is fallible and human knowledge is limited and imperfect. Moreover it is not uncommon that an expert witness, however impartial he may wish to be, is likely to be unconsciously prejudiced, in favour of the side which calls him.

This is the area of caution that the Court must always bear in mind in assessing the evidence of an expert.

Mr. Gee (PW9) admitted that he has wide experience in the field of gun identification. He holds a B.Sc. Honours Degree in Chemistry and has had six years of experience behind him in the Department of Chemistry in this field. He had undergone in-service training under one Dr. Harcharan Singh Thara, who holds a Masters Degree in Analytical Chemistry from Imperial College, London. He had also given evidence in Courts.

It was understood at the outset of the hearing of the evidence of Mr. Gee that the photographs tendered by the prosecution P108 and P109 should not be treated as the basis of Mr. Gee's findings. His findings are based on what he personally examined and found visually and under the comparison microscope. The photographs he took were only for record purposes, merely to illustrate some of the marks and characteristic lines which he saw and which he compared under the comparison microscope and some of which became the basis of his findings.

According to Mr. Gee during his six years in the Department of Chemistry he had done 62 cases of firearm examinations. In these cases 54 guns were involved and bullets and casings he examined totalled about 500 bullets and 900 cartridge cases in all. During his training on the job he had examined about 130 guns with a total number of bullets 800 in all and cartridge casings 720 in all. Out of the 184 guns he had examined they consisted of pistols, revolvers, rifles and shotguns.

After going through his background I have no doubt whatsoever that Mr. Gee is competent to give evidence as an expert in matters pertaining to gun identification.

On his method of working Mr. Gee testified that he would normally require five live rounds of ammunition for testfiring and comparison purposes. He said every shot fired from the same gun would leave marks of similar characteristics. In this case he did five test shots and compared them and he picked up the characteristic markings and he also managed to determine the reproduceability of almost all these markings. In practice, according to him, five rounds of shots would ensure that the characteristic markings are picked up. In addition to these characteristic lines one would also normally get stray lines on expanded slugs. These stray lines are not always reproduceable from bullet to bullet even fired from the same gun. The stray lines can appear for many reasons, for example, presence of metal foul or particle or presence of rust or lines produced during manufacture. He could recognise and isolate these stray lines. The edge of cartridge case can also create marks on the bullet. When he first examined evidence bullet A he found it slightly damp and dented. There was no other damage. I personally saw the slug (A) and although there was a dent near the tip the grooves are clearly visible over a larger area of the slug. Bullet A1 was also damp but was not dented. Under the microscope he could see pitted marks which did not affect the markings of the whole bullet. The grooves were averagely the same. He gave the measurements of the grooves of bullets A and A1.

He also examined bullet casings B and B1. When ASP Sohan Lal came to see him on 29 April 1982 he advised Sohan Lal to testfire .32 semi-automatic pistols first with WW 32 brass jacketed bullets only. He said he confined his advice to .32 semi-automatic pistols for two reasons. Firstly he said before Sohan Lal came he had already examined bullets A and A1 and cartridge cases B and B1. They were brass jacketed bullets and when he compared them he found the two bullets A and A1 do not have "skid marks". He explained that "skid marks" in bullets is a common characteristic of bullets fired from revolvers. The other reason was that when he compared the two cartridge cases B and B1 the individual characteristics are so similar when he matched them and he also observed that the ejector marks present in both were approximately of the same position. For these two reasons viz. the absence of "skid marks" and the presence of ejector marks on the cartridge case he came to the conclusion that the most likely weapon used was a semi-automatic pistol. He admitted however that this was only an initial elimination process. If subsequently he was not satisfied he would go to revolvers. But events proved that to be unnecessary.

As the basis of his findings Mr. Gee said he looked for similarities in firing pin marks and breech face marks. He did not use the extractor marks or the ejector marks to form the basis of his conclusions because they are generally unreliable. According to him they are unreliable because the ejector marks and the extractor marks even when fired from the same gun are moveable. The reason is that after the cartridge has been fired, because of recoil force the cartridge case is moved back and this cartridge case moves a slight distance before coming into contact with the ejector. Thus it has a tendency of a slight movement. There was however no pattern in the movement. Thus he did not take any measurement of it as it would serve no purpose. Whereas the firing pin mark is constant in all cartridges fired from the same gun.

The basis of his findings was severely criticised in cross-examinations. The cross-examinations relied almost entirely on textbooks and photographs which Mr. Gee had himself taken for record purposes. The photographs tendered by the defence D110 and D111 (which were copies of P108 and P109) were produced to show *inter alia* that -

(1) there was no proper alignment in the taking of the photographs and therefore the photographs are unreliable;

(2) there was no proper illumination used and therefore there was no proper and clear examination done of the lines and the grooves; and

(3) there was no superimposition of pictures taken to make comparison perfect.

In my view the cross-examinations basing on photographs D110 and D111 are with respect misconceived. I shall however deal with them briefly. What appeared as non-alignment was the result of Mr. Gee focussing on a specified area, in the case of photograph P108E for example was taken focussing on region “a” in (P108A). Similarly photograph (P108F) sought to record same region “a” in photograph (P108A). It is common knowledge that anything outside the focus area would tend to look non-aligned. Mr. Gee maintained that there was proper illumination; the result of the photographs was probably due to dullness of the evidence bullet or cartridge compared to the relative brightness of the test bullets and cartridges. Superimposition of photographs was not done because according to Mr. Gee photographs by themselves would never make satisfactory comparison. Physical and visual comparison under the comparison microscope was his standard procedure to arrive at his conclusion.

The acceptance or otherwise of the evidence of Mr. Gee must be on the basis of his findings. The photographs were however not the basis of his findings. The basis of his findings was in his own personal examinations which he explained in detail. He said he examined the test bullet casings in X61 as against evidence bullet casings B and B1. He found similar characteristic markings and came to the conclusion they were fired from the same gun. He then compared evidence bullets A and A1 with all the testfired bullets in X61 and again found similar characteristics. The result was that he came to the conclusion that evidence bullets A and A1 were fired from the same gun that fired the five test bullets in X61.

Mr. Gee’s basis for his conclusions can best be described in his own words in the witness box. He said:

> I then compared evidence bullets A and A1 with all testfired bullets in 'X61' and again found similar characteristics. The result is that I came to conclusion evidence bullets A and A1 were fired from the same gun that fired the five bullets in 'X61'. With regard to casings B and B1 I first compared them and found them to bear similar characteristic markings and came to conclusion that they were fired by same gun. I then compared evidence cartridge cases B and

B1 with every of the five test cartridge case in 'X61'. I again found similar characteristics. Basing on that I came to conclusion evidence cartridge cases B and B1 were fired from the same gun that fired the five cartridge cases in 'X61'.

At the conclusion of his evidence I accepted his evidence and conclusions. In fact looking at some of the photographs even a layman can identify many similar lines and ridges clearly in the photographs (Photographs 108E, 109A and F).

I am therefore satisfied that evidence bullets A (P18) found in the skull and A1 (P19) found in the folds of the sarong of the deceased the casings B and B1 were fired from the semi-automatic pistol (P88).

**(c) Cautioned Statement of Dato' Mokhtar Hashim**

The cautioned statement of Dato' Mokhtar was admitted as Exhibit P119. Its voluntariness was not challenged and during submission its truth was admitted. The statement contains straight forward questions and answers the material parts of which are for convenience reproduced below.

Question : How long have you been in possession of the firearm?

Answer : I have been in possession of the firearm when I became the Member of Parliament for Tampin Division in 1972 or 1973.

Question : Did you ever lend your firearm to anyone since you possess it?

Answer : No.

Question : Do you always carry your firearm along when you go out?

Answer : I always carry my firearm along with me when I go out.

Question : Did you, during the recent general elections from 5 to 22 April 1982 ever leave your firearm anywhere else?

Answer : During the dates mentioned I was living in a rented house at No. 513, Tanman Clonlee, Tampin and the gun was either in the house or with me.

Question : On 13 April 1982 was this firearm with you?

Answer : On 13 April 1982 this firearm was with me the whole day.

Question : Does that mean that the firearm was with you from morning till you went to sleep that night?

Answer : Yes.

Question : On the morning of 14 April 1982, when you got up from sleep, was the firearm with you?

Answer : Yes, it was still with me.

The parts of the statement reproduced above are self-explanatory. The evidence of SAC Yahya (PW29) of his conversation with the first accused also confirms that gun (P88) was in the possession of the accused on 13 & 14 April 1982 being in the election period. Mr. Jagit Singh challenged the probative value of (P119) as no reference is made of either the gun serial number or the gun licence. With respect it is not difficult to accept that looking at the whole evidence both Bashir and Dato' Mokhtar knew what gun they were talking about in (P119).

**(d) The evidence of identification witnesses.**

The first identification witness called was Atun bin Ali (PW18). He is a 55-year old man supporting himself by being a "dukun" (medicine man) and doing some kampung work. He said he attended the funeral of the late Dato' Taha on 14 April 1982.

The importance of the evidence of this witness is that he claimed to have seen and identified five persons at about midnight on 13 April 1982 while he was returning home walking along an estate road. His house is about three miles from Gemencheh. According to his story he waited for transport to go home that night but failed to get any and therefore walked home. This was about midnight. Before that he had bought a candle as he had to pass through a rubber estate. It was a moonlight night. According to him he wanted to use the candle light to help him follow the path in the estate as well as to let people recognise him lest he might be mistaken for a thief. As he was walking he saw a white car and as he went near the car he saw one man to the right and another to the left and one of them was holding a torchlight and lighting the back portion of the car. He saw the back portion of the car and noticed the number plate (JJ192). When he came near the car the two persons came towards him and they were then only at arms length from him and he asked for a light. Then somebody from somewhere in front shouted "Don't give him light". He then proceded onwards going towards the direction of the voice and there he saw three other persons in front of the car crouching on the ground. As he was trying to get near to them, one of them waved him to go away. Realising that he was not wanted he proceeded on his journey home. According to him he could identify all the five persons well. The first two persons he saw in front of the car were Aziz Tumpuk (now deceased) and Nordin bin Johan (the second accused). The three persons whom he saw crouching in front of the car were Dato' Mokhtar Hashim (the first accused), Cikgu Dolah (Abdullah Ambik) (PW30) and Aziz PJK. (the fourth accused). He said it was Aziz PJK. who was the one who waved him away. According to him the night was a moonlit night. This seems to be corroborated by the Director of Topographical Survey (PW26) who has made a study of astronomy and the Assistant Director of climatological conditon of the Malaysian meteorological services (PW27). According to PW26 the night of 13 April 1982 had a three-quarter moon and the moon rose on 13 April 1982 at 11.13 p.m. and set on 14 April 1982 at 10.42 a.m. for the Gemencheh area. According to PW27 there was no record of rain in the Gemencheh area from the midnight of 13 April 1982 until 3 a.m. on 14 April 1982. According to him there was in fact no record of rain throughout the country during the material period. PW27 produced a radar chart (P118) showing no rain observed in the State of Negri Sembilan during the material period.

It is pertinent to note that all the five persons that PW18 saw and identified that night in the estate were according to him no strangers to him. He said he had known Aziz PJK. for more than 10 years and they were friends and used to play "machok" together. He had known Aziz Tumpuk for more than 10 years and had known Nordin Johan for more than 5 years. He knew the first accused as a Minister; he voted for him in the previous election and had posters of his photograph in his house and he knew Abdullah Ambik for more than 10 years.

PW18 is a local resident and he testified that the distance between the spot where he met the five persons with the white car and the deceased's house is about 3½ miles.

The defence vigorously challenged the evidence of PW18 on the following grounds:

(1) He is not a witness of truth because he was a habitual gambler and information given to the police was for the purpose of procuring the reward advertised by the police.

(2) The story given in his evidence was an after-thought because he only informed what he saw on the night of 13 April 1982 to OCPD Tampin, Bahadon (PW17) on 26 April 1982, that is nearly two weeks after the night he claimed to have seen the white car and the five persons he identified.

The first ground of the defence cannot be accepted because although PW18 admitted he played "machok" with Aziz PJK. he said he only betted but did not play as he did not know how to play. He said he did not know of the reward. In any case this is in my view irrelevant. As regards the second ground I accept the reasons given by the witness for delaying his information to OCPD Tampin. According to him he attended the funeral of the late Dato' Taha and while standing around he heard a conversation between an old lady (Liah bt. Nahu, PW25) who was telling the other laides that the night before she had seen a big white car coming from the direction of the main road, made a turn and parked near Sudin's shophouse near the gate of the deceased's house. She then heard gunshots.

It must have been obvious at the time of the funeral that the late Dato' Taha had died of gunshot wounds. So PW18, a simple kampung man he was, started to think. It is best to refer to his own evidence on this which as follows:

> I knew Dato' Taha before he died. I had not been to his house before his death. I had not met Sudin before Dato' Taha's death. At the scene there were many policemen and kampung people. When I attended the funeral I did not know how he died. But I heard from an old lady a white car came up to front of deceased's house and she heard gunshots and after the shots the car left the place. She was talking to her friends. I overheard. She heard 2-3 shots. This was while I was attending the funeral.
>
> I kept silent for two weeks because I was thinking of the story of the old lady of a white car in front of Dato' Taha's house. I was thinking he was a Minister and I am a poor person. He could harm. I was afraid.

I accept his explanation. I also found PW18 to be a consistent witness, unshaken by very severe cross-examinations.

Application to impeach the credit of this witness was made purporting to be under s. 155(c) of the Evidence Act firstly by Mr. Sri Ram because he said he had a "hunch" that there should be a difference between the statement to the police and the evidence in Court in respect of the event of the night of 13 April 1982. I refused the application to be without basis because all along PW18 admitted he gave information to OCPD Tampin but denied he had told a different story. A similar application by Mr. Ponniah was also refused as was also the application of Mr. Manjeet Singh on the same grounds. What is implicit in *Husdi v. PP* [1980] 2 MLJ 80 is that there is a material contradiction which is unexplained by the witness. Here PW18 said he kept silent for a few days until he had thought seriously about what was told by the old lady to her friends within his hearing about the big white car seen just before the shots were heard in front of her house. PW18 explained the delay satisfactorily because as he said a Minister was involved and he was only a poor man and therefore had to be cautious.

The second identification witness called was Sudin bin Sharif (PW22). He is 64 years old and father-in-law of the deceased staying in a room near the kitchen of the house of the deceased at the material time. His evidence is straight forward. According to him on 13 April 1982 at about 8.00 p.m. the deceased left the house by car. Then at about 8.30 p.m. someone came to the house and called out his greeting "assalamualaikum" to which the witness responded and then he opened the kitchen door and saw the caller. PW22 went towards the caller and they shook hands and spoke to each other. According to PW22 he had known

the caller for about 20 years as Cikgu Abdullah Ambik. When the caller was told that the deceased was not in he went away. The deceased returned at about 12.45 a.m. This PW22 knew as he himself opened the same door to let the deceased in. Then the deceased's car was driven away by the driver. Shortly after the same caller came again and gave his greeting "assalamualaikum" three times. PW22 also answered and opened the kitchen door but did not see the caller there. Then he looked towards the hall of the house and he saw the caller in the hall, seated. According to PW22 the caller the second time was the same man, Abdullah Ambik. After that PW22 went back to his room and was lying down but did not sleep. At about 1.30 a.m. he heard a shot followed by two other shots. He however did not get up or do anything as he said he did not suspect anything. Only at 6.30 a.m. the following morning was he awakened by his grandson, Adlan bin Khamis (PW24) who said that there was a dead body near the gate of the house. All those in the house went to the scene and when Datin Norsiah (PW23) recognised the body of her husband, she screamed and went towards the body. The position of the body, according to PW22, was as shown in photograph P11E.

The challenge of the defence on the evidence of PW22 is on the following grounds:

(1) He was an interested party as the deceased was his son-in-law.

(2) Like Atun Ali (PW18), this witness (PW22) also did not inform the police immediately of the identity of the night caller. Asked by the defence if he gave a different story to the Press on 14 April 1982 he said he cannot remember if at all he said anything as his mind was disturbed that day. In fact he said he cannot remember if he spoke to any reporter. He denied that Abdullah Ambik was the person suggested to him by the police as the night caller. He was emphatic that the caller on both occasions was Abdullah Ambik who was also no stranger to him. He explained the delay in identifying Abdullah Ambik to the police because of fear. PW22 said that he was afraid that if "they" could kill a person of the standing of the late Dato' Taha who knew the Prime Minister, what about him, an ordinary person.

I thought his explanation was also reasonable to explain the delay as in the case of PW18 having regard to the personalities involved in this case.

Thus I rejected both grounds of the challenge of the defence on the testimony of this witness.

The third identification witness was Datin Norsiah bt. Othman, widow of the deceased (PW23). Her evidence is also straight forward. She had been living and is still living in Seri Asahan, Gemencheh. On the night of 13 April 1982 after the husband left to go to a "ceramah" at Bukit Rokan, she went to her bedroom and after reading a newspaper went to sleep. She was awakened only when the husband returned at 12.45 a.m. She said she knew the time because her husband said so when he came into the room. A little while later she heard someone gave the greeting "assalamualaikum" three times. She said her husband went to open the front door and the caller came into the house. She got up and stood at the door of the bedroom and was standing just a little outside the door when she saw Abdullah Ambik seated in the hall. At that time she could not see the husband because the husband was hidden from her view by the curtain. As was her habit when there was a visitor, she went down to the kitchen to make coffee which took her about fifteen minutes and then she went up with the coffee but found both the husband and Abdullah Ambik no longer in the hall. She then sat at the front door for five minutes but could not see anything outside. Then she went back to her bedroom to lie down and then she heard a shot followed by two other shots. She thought people were shooting musang, so she did not bother and then fell asleep. Only the following morning was she informed of a dead body at the gate of the house which later turned out to be that of her late husband.

In her testimony she remained emphatic that Abdullah Ambik is no stranger to her or to the house. She had known him for seven to eight years and seven to eight years previously Abdullah Ambik used to come to the house but after that Abdullah Ambik stopped coming except on the night of the incident.

In her cross-examination by the defence she denied that it was her father (PW22) who suggested the name Abdullah Ambik to her as the night caller. In her testimony she said she knew personally that the caller that night was Abdullah Ambik. But she did not inform any police officer. Some time after the death of her husband she denied being shown any police sketches. She denied she identified anybody else except Abdullah Ambik because she said she recognised Abdullah Ambik and nobody else. Although she had not seen Abdullah Ambik for seven or eight years she had always seen him in town or at the market every Sunday.

On the morning the dead body was discovered, OCS Gemencheh (PW15) was the first to arrive at the scene. Datin Norsiah admitted that she told the sergeant she could not recognise the caller. In her testimony in Court she said that she was afraid that her family would be threatened. After some time she heard that Abdullah Ambik was arrested and then she decided to reveal Abdullah Ambik's name as the visitor. This witness was emphatic from the beginning to the end of her testimony that the caller on the fateful night was Abdullah Ambik and not Haji Razak or anybody else. Her explanation for not informing the police of the identity of the night caller immediately after the incident can be summarised in the passage of her own testimony which read as follows:

> I did not tell the OCS and others because of fear. The fear was I was scared I would be threatened. If my husband in his position that could happen to him like that what about me. Apart from my husband, there were my mother and my father and children. They are school children. Abdullah Ambik used to visit my house 7-8 years ago. Apart from that night of 13 April 1982 he did not come. However I used to see him in town and market.

As regards all these three witnesses it is important in my opinion to draw a distinction between recognition and identification. Recognition is more reliable than mere identification. Recognition of a person known to the witness would be more reliable than identification by a witness of a stranger. Some pertinent questions were put by the Lord Chief Justice in the judgment of the Court of Appeal in *Raymond Turnbull and Ors.* [1976] 63 Cr App R 132 appearing at p. 137 as follows:

> Secondly, the Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as far example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police?

The next identification witness is Liah bt. Nahu (PW24), a 59 year old lady whose house is close to the deceased's house across the road. A description of what she saw in the early hours of 14 April 1982 was brief. She was alone in the house. Then she saw a car coming from the direction of the main road Jalan Gemas. She then went to the window of her house from which Sudin's shophouse could be seen. She saw that the car was white and the time was about past 1.00 a.m. The car made a turn and stopped near the shop. The deceased's house was behind the shop and the shop was outside the fence of the deceased's house.

When the car stopped she said the car was facing the Gemas road. Then she saw two men came out of the car and walking up and down. At first she thought they were thieves but after a while since nothing happened she went to bed. While about to fall asleep she heard shots. According to her she heard two shots but did not hear the third one. She continued to sleep until morning. A description of the car was that it was a white car similar to the deceased's car and also about the size of the deceased's government car which at the material time was a Mercedes Benz 240D.

The last witness which can also be classified as identification witness is PW21, Mohd. Nor bin Isa, a 41-year old director of companies. A cursory look at background and his apparent hostility towards all the accused would reveal that this witness is clearly partisan probably because of his very close relationship with the deceased which is understandable. He served the deceased as personal secretary-cum-personal representative when the deceased was the head of UMNO Bahagian Tampin from 1960 to 1980. In 1980 the deceased lost the leadership of the UMNO Bahagian Tampin to Dato' Mokhtar, the first accused. I have to consider the testimony of this witness with caution but I would not reject his testimony wholly. In my view those parts of his evidence could be acceptable if they find corroboration either in the cautioned statement (P101) of Rahmat Satiman or the evidence of other witnesses. These parts of PW21's testimony which can be accepted are-

(1) The strained relationship between the deceased and the first accused;

(2) The deceased left the Gemencheh election office for home at past 12.30 a.m. on 13 April 1982 and that the house of the deceased is about 2-3 miles from the office.

**(e) The cautioned statement of Rahamat Satiman**

The prosecution sought to admit a cautioned statement of the third accused, Rahamat bin Satiman. The statement was recorded on 23 June 1982 by Ag. DSP Bashir bin Ali. The statement was recorded at the Gombak police station where the third accused was being detained. For the purpose of this trial the law on the admissibility or otherwise of this cautioned statement is contained in reg. 21 of the Essential (Security Cases) Regulations 1975 as amended by PU(A) 362 Of 75. Under reg. 21 a statement made by an accused orally or in writing to any person shall be admissible in evidence notwithstanding any or all of the situations described in paras. (a), (b),(c), (d), (e), (f), (g), (h) and (i) of the regulation. However, the Federal Court in *Johnson Tan Han Seng v. PP* [1977] 2 MLJ 66 required that the statement must in any case be voluntary. The defence forthwith challenged the voluntariness of the statement.

The prosecution evidence to prove that the statement was free and voluntary consisted of the evidence of the recording officer himself, Ag. DSP Bashir and other witnesses called both by the defence and the prosecution. The recording officer testified that the statement (ID101 later admitted as P101) was made freely and voluntarily. This officer also testified that he administered the caution and explained the proviso of s. 112 of the CPC and said that the third accused understood it. He used no threat and gave no hope or promise in return for the statement. According to the officer, Rahmat Satiman looked very relaxed and in fact narrated the statement spontaneously and continuously with only very few questions from him to clarify certain points.

The *voire dire* produced copious testimonies as a result of intensive and severe cross-examinations of almost all the witnesses called to testify. To put them shortly the grounds on which the defence relied to show involuntariness in the cautioned statement were merely as follows:

(1) The statement was not only involuntary but merely a reproduction of what had been coached to Rahmat Satiman by his interrogators.

(2) It was also contended by the defence that Rahmat Satiman was subjected to generally inhuman treatment.

(3) Finally Prof. Deva Dass, a psychiatrist, was brought by the defence to show that under certain pressure a person would do just as the third accused had done in this case, that is capable of reproducing what had been coached or tutored on him thus reflecting the state of mind of the third accused as a result of the alleged cruel acts perpetrated on him by the interrogation team.

After considering the evidence as a whole I rejected all the allegations of the defence to be without foundation. My detailed reasonings are contained in my ruling issued on 8 November 1982. In fact at the conclusion of the trial-within-trial I found no satisfactory evidence even to suspect that there was threat, inducement or promise used on the third accused. I was also satisfied on the facts disclosed in the evidence an interrogation team as described by the defence could not have existed.

That ruling however dealt only with the admissibility of the statement. In my ruling dealing with the question of the probability or otherwise of the contents of the statement to have been tutored or coached on the third accused I referred in one sentence on the contents of the statement itself to show that the details of the narration are so intricate that none but the participators would be able to narrate the events in that manner. To answer the question posed by the defence it was in my opinion permissible for me as the trial Judge to go even into the contents of the cautioned statement to determine the voluntariness of the statement. It is always difficult to draw a line of the theoretical and philosophical boundary between matters going to admissibility and matters going to weight and cogency. I alluded to the sequence of events in the cautioned statement merely to show the improbability of involuntariness without however touching weight or cogency. See also *R. v. Robson and R. v. Harris* 1972 1 WLR 651.

The first statement of Rahmat Satiman was recorded by Ag. DSP Bashir bin Ali on 23 June 1982 (P101). On 9 July 1982, that is the day immediately before Rahmat Satiman was charged in Court, he made another statement to another police officer (D102). The second statement carried his defence of alibi.

Before I deal with the central issues I would like to deal with some aspects of the prosecution case to complete the record:

**(i) The impeachment of Abdullah Ambik (PW30)**

It is in the evidence of Sudin bin Sharif (PW22) as well as the evidence of Datin Norsiah (PW23) that the person who called at the house of the deceased on the fateful night of 13 April 1982 was Abdullah Ambik. The evidence of both these witnesses has been dealt with. When however Abdullah Ambik himself was called by the prosecution to give evidence (as PW30) he turned "hostile". He is a 54-year old teacher of Sekolah Kebangsaan residing in Geduk, Gemencheh with an SPM qualification. Apparently he has been the Ketua Cawangan UMNO Geduk since 1965 until today.

At the outset three things should be noted about this witness. Firstly he is the son-in-law of the fourth accused, Aziz bin Abdullah. Secondly, he was one of the two names recommended by UMNO Bahagian Tampin (of which Dato' Mokhtar, the first accused was the Chief) to the state UMNO Liaison Committee as the proposed candidates for the State seat of Gemencheh in the 1982 elections. Thirdly, on the second day of his examination he

stated that as a Muslim he spoke the truth in Court. I am not clear what his motive was for saying this for it is well settled in Muslim jurisprudence (as far as I know) that for a Muslim to qualify as a witness worthy of belief he must, besides being a Muslim in name only, satisfy several stringent rules like "abstaining from committing capital sins" and "not in the habit of committing minor sins" - see p. 515 of Minhaj-et-Talibin. In our system of administration of justice the credibility of a witness depends on a slightly less complicated guideline. In fact the Evidence Act does not purport to lay down any rule as to the weight to be attached to the evidence of the witness when admitted. Generally in practice as far as witnesses are concerned it is left to the Judge who hears and sees the witness to attach to their evidence the weight it deserves from their demeanour, deportment under cross-examination, motives to speak or hide the truth, means of knowledge, powers of memory, and other tests, by which the value of their statements can be ascertained, if not with absolute certainty, yet with such a reasonable amount of conviction as ought to justify a man of ordinary prudence in acting upon those statement. See also Woodroffe Ameer Ali.

In Abdullah Ambik's testimony he denied that there was any friction between himself or the late Dato' Taha or between the late Dato' Taha and Dato' Mokhtar. On further questionings in his examination-in-chief he gave evidence unfavourable to the prosecution and denied knowledge of the plan and killing of the late Dato' Taha. The learned Attorney-General then produced a statement under s. 112 of the CPC PW30 admitted he had made to DSP Manaf during his detention (P120). He made a second statement also to DSP Manaf on 7 September 1982 after his release from detention, which statement would also appear to be consistent with the first statement.

On examining P120 I found there are indeed material contradictions on the description of events on 6, 8, 11, 13 & 14 April 1982. PW30's explanations for the contradictions between his statement in the witness box and his statement to the police can be summarised simply as follows:

(a) His answers in the statement to the police were based on questions by the police and some of the facts he stated there he knew them to be lies.

(b) After one and a half months in detention and after telling the police the truth which he said the police consistently rejected and since he could not stand the punishment and humiliation caused on him by the police he just gave his answers based on the questions put to him by the police. He was released on 10 July 1982.

I found it difficult to accept the explanations of PW30 on the contradictions because he gave two separate but consistent statements to the same police officer which were totally different from what he said in the witness box. The first statement was given while he was in detention but the second statement was given almost two months after his release from detention. It is also obvious that he changed his story after being subpoenaed as witness for the prosecution and after being visited by two lawyers for the defence (Encik Manjeet Singh and Encik Abu Zahar). Apparently it was only after receiving the subpoena did he lodge a report on his statement at the Seremban police station on 9 October 1982, which again was three days before the trial commenced.

Defence had earlier objected to the admission of the statement (P120) on the grounds that voluntariness was in issue. I overruled the objection on the following grounds-

(1) PW30 himself admitted making the statement and only denies its truth;

(2) P120 is in this case admitted not as evidence in the main trial but only as a statement to impeach the credit of PW30 in an impeachment proceeding;

(3) Exhibit P120 is in any case admissible at the discretion of the Court under reg. 21(3) of the Essential Regulations.

At the conclusion of the impeachment proceeding I ruled that the credit of PW30 was successfully impeached.

Two important principles are involved in an impeachment proceeding. Firstly, where the witness does not admit making the previous statement then the previous statement must be proved. In this case PW30 admitted making the statement but only denied the truth of the contents - see also *Muthusamy v. PP* [1948] 14 MLJ 57. The second principle is that when a witness is shown to have made a previous statement inconsistent with the evidence by the witness at the trial, the evidence given at the trial shall be disregarded as unreliable. If the trial is with a jury then the jury should also be directed that the previous statement does not constitute evidence upon which they can act. See *R. v. Morgan* 1981 2 NZLR 164.

**(ii) Was it two shots, three shots or four shots?**

Three witnesses testified that they heard gunshots at or around 1.30 a.m. According to his testimony Sudin bin Sharif (PW22) after returning to his bedroom and was about to sleep heard three shots. Datin Norsiah (PW23) in her testimony said that after preparing coffee for the husband and the visitor waited for about five minutes at the door and then returned to her bedroom. Shortly afterwards she heard three shots. Liah bt. Nahu (PW24) in her testimony said that she saw through her window a white car similar to the government car of the deceased and then saw two men pacing up and down. After seeing that nothing happened she went back to sleep. As she was about to fall asleep she said she heard two shots. PW3 who performed the post mortem found three entry gunshot wounds although two bullets were discovered form the body. One bullet was clearly seen in the x-ray lodged in the thigh tissue but was not extracted.

Thus on the evidence it is only PW24 who said there were two shots fired. She was an old woman and when she heard the shots she was already falling asleep. Therefore looking at the evidence as a whole including the cautioned statement of Rahmat Satiman (P101), there is no doubt that the number of shots fired was three and not two. The defence is apparently anxious to show that it was two shots and not three because it is the defence theory that the late Dato' Taha was killed elsewhere and the body was dumped in front of the gate of his house. The theory is that as they dumped the body the assailants fired two shots in the air and that is the reason why they say only two shells were recovered by the police at the scene. But with due respect this theory is difficult to accept and is inherently illogical. For if a murderer or murderers had killed a victim elsewhere and wanted to dump the body at a certain place the most reasonable thing to do was to dump the body at the scene quietly and leave the scene as fast as possible. But the evidence of Liah bt Nahu is that the white car came and turned around and parked itself near Sudin's shophouse and was there for some time before the shots were heard. Why should two shots be fired in the air just to attract attention? Therefore the theory of the defence is in my view unreasonable and cannot be accepted. Likewise there is no evidence even to suggest four shots were fired.

***The central issues.***

**(a) The statement of Rahmat Satiman**

The central issues revolved around the statement of Rahmat Satiman (P101). It is important to be acquainted with the contents of the statement to get a clear perspective of the issues.

The first part of the first statement of Rahmat Satiman deals with his background. He had 29 years experience in the army and retired as Sergeant Major II. In the army he was a soldier and part of the service served as gunner. In his background he also related his experience

in UMNO politics where he was elected as Vice President UMNO Cawangan Kampung Repah in 1980 and two years later he was elected as the head of the UMNO Branch. It was in the evidence of PW21 subsequently that it was this UMNO Branch that withdrew support to the late Dato' Taha amongst the 14 Branches called to the meeting before the Nomination Day.

The second part of his statement Rahmat Satiman dealt with planning and preparation. The first meeting was held on 8 April 1982 at Dato' Mokhtar's house in Tampin at 11 p.m. when the idea of toppling the late Dato' Taha came into discussion. The first accused clearly played a dominating role in this meeting and it was at this meeting that he told Rahmat Satiman to find the bomoh for the purpose of weakening the powers of Dato' Taha and assured Rahmat Satiman not to worry about finance. It was agreed then that Rahmat Satiman was to go Johor Bahru either on the 13 or 14 April 1982 to look for the bomoh and at the same time to invite his elder sister to attend the wedding of his daughter on 17 April 1982. The second meeting between Rahmat Satiman and the first accused was held on 10 April 1982 at 10.30 a.m. this time at Tampin UMNO office. Apparently Rahmat Satiman was wavering in the plan whereupon he said the first accused became angry and yelled at him and said that the matter was now in the midst of implementation and he (the first accused) could not compromise. Rahmat Satiman gave an undertaking to see the bomoh. But the first accused told him to return to Gemencheh on 13 April 1982 after meeting the bomoh and getting the things necessary from the bomoh and then to return to Johor Bahru only after everything was completed. He said at that meeting he was also informed by the first accused that apart from Nordin Johan (second accused) and Abdullah Ambik (PW30) there was another person, that is Aziz bin Abdullah (fourth accused) - otherwise known as "Aziz PJK." - who would also render the necessary assistance if Dato' Taha was aggressive. It was also at that meeting that Rahmat Satiman said the first accused told him there already existed a plot planned by Dato' Rais Yatim and the late Dato' Taha to defeat him (Dato' Mokhtar Hashim) in the election by giving RM30,000 and RM20,000 respectively to the PAS Parliamentary candidate. This plot was also known to many other higher-ups in the UMNO hierarchy.

The third time Rahmat Satiman met Dato' Mokhtar was on 11 April 1982 at Dato' Mokhtar's house in Tampin. He was handed RM300. As arranged Rahmat Satiman, according to his statement, went to Johor Bahru on 13 April 1982 at 8.15 a.m. in his car NL 4170. He arrived at the bomoh's house at 10th mile, Scudai at 11.30 a.m. He was given incense (kemenyan) and with instructions that some be strewn at the place where the late Dato' Taha used to pass so as "to make him weak", some have to be burnt for the smoke to go into the compound of the late Dato' Taha for the purpose of "overcoming all magical powers possessed" by the late Dato' Taha and finally some of it were to be eaten or to be worn by all concerned so that "other people would obey the words and commands of these persons". After getting all these instructions Rahmat Satiman returned to Gemas at about 4 p.m. and while waiting for the appointed time to meet the others as arranged he divided the incense (kemenyan) into five parts to be handed to the first accused, Abdullah Ambik, Nordin Johan, Aziz PJK. and himself. As promised at about 12.30 - 12.45 a.m. on 14 April 1982 he went to the road side near the sawmill at the 12th mile and then a Mercedes car from the direction of Tampin arrived driven by Dato' Mokhtar. Dato' Mokhtar again gave him a warning in Malay roughly translated - "Do not try to help Dato' Taha. Evil to you". When they arrived in front of the late Dato' Taha's house Rahmat Satiman said he scattered the incense around Dato' Taha's house and after finishing circling the house and burning the incense he saw Aziz Tumpuk (now deceased) and one Ma'dan under a tree.

The third part of his statement Rahmat Satiman dealt with the actual killing of Dato' Taha. He was told by Nordin Johan that Dato' Taha was coming down from his house with Abdullah Ambik and Aziz PJK. He saw them coming and he also saw that when they reached halfway suddenly Aziz Tumpuk, Ma'dan and Nordin Johan pounced upon Dato' Taha and guarded him. They tied Dato' Taha's hands, mouth and eyes as planned. They took Dato' Taha to the front fence of his house. Then he saw the first accused, Dato' Mokhtar Hashim shot Dato' Taha and he believed that the first shot was towards the deceased's body. The second shot was towards the late Dato' Taha's head because Rahmat Satiman said he heard Ma'dan and Nordin Johan's voices saying in Malay roughly translated - "Slow to die Dato' - shoot at the head, faster a bit" and it was after this that he saw Dato' Mokhtar shot for the second time. Rahmat Satiman said after that the late Dato' Taha was released and he heard Nordin Johan (second accused) asking for the pistol from Dato' Mokhtar as he also wanted to shoot the late Dato' Taha. After that Rahmat Satiman said he heard a shot and from the flash of the explosion he said he clearly saw the second accused firing the third shot towards the late Dato' Taha.

Rahmat Satiman said he saw Nordin Johan, Aziz Tumpuk (now deceased) and Aziz PJK. untied the bindings to the eyes, mouth and hands of Dato' Taha. Then the body of the late Dato' Taha was put right and after that all of them went into the car and was driven off by the second accused. He saw Ma'dan and Aziz Tumpuk got into another car whose number and make he could not make out. After that Rahmat Satiman was taken to a place where he had been waiting earlier and the first accused warned him again "Watch your mouth carefully" and handed him an envelope which contained RM500 and Rahmat Satiman then left for Johor Bahru via Jalan Tampin, Melaka arriving at Air Hitam at about 4.00 a.m. on 14 April 1982. He then proceeded to his sister's house at Kampung Majidi, Johor Bahru to fetch the elder sister back to his kampung. He arrived at his sister's house at 8.00 a.m. and after taking a bath departed at 9.30 a.m. stopping at Muar to buy vegetables and arriving at his house at about 2.00 p.m. on 14 April 1982.

The statement of Rahmat Satiman must therefore be viewed as a statement implicating not only himself but all the other co-accused.

At the end of his statement Rahmat Satiman admitted that the plan to kill Dato' Taha was agreed to while they were in the car. But it can also be inferred in an earlier part of the statement with regard to the event on 10 April 1982 when reference was made by Dato' Mokhtar that apart from Nordin Johan and Abdullah Ambik, Aziz bin Abdullah would also be involved in assisting should Dato' Taha become aggressive.

For a proper approach to take in dealing with the statement of Rahmat Satiman (P101) it may be useful to refer to the grounds of appeal before the Federal Court in *Herchun Singh & Ors. v. PP* [1969] 2 MLJ 209. One of the grounds of appeal against the conviction there was that the confession of the fifth accused was not a confession and therefore should not have been taken into consideration against the other appellants in the absence of other evidence clearly implicating each of them. In dealing with the question H.T.Ong CJ said at p. 209:

> We think the most convenient and logical way to deal with these appeals is to start with the confession by Ramasamy. A confession, as defined in s. 17(2) of the Evidence Ordinance, "is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence". The learned trial Judge held, in our view quite rightly, that the statement by Ramasamy was a confession. It told of a robbery and of his own participation therein. More than that, he merely attempted to pelliate his own offence by alleging that he acted under coercion. Of him the Judge said, "He may not have been the villain of the piece but he did take part in the robbery."

It is my view that (P101) is a confession or at least a statement in the nature of a confession. What then is the role to be played by P101 in the prosecution case? This in my view is the crux of the question.

On the use of a confession as against the maker the position in law is clear. An accused can be convicted on his confession if the Court believes it is voluntary and it is true.

Since there is evidence of a second statement by Rahmat Satiman tendered by the defence although during the trial-within-trial (D102) which denied liability, I feel bound to regard (P101) as a retracted confession. Certain Indian authorities require confession. But in *Osman & Anor. v. PP* [1967] 1 MLJ 137 a Federal Court decision in Singapore refused to accept the Indian authorities and adopted the view of the Malayan Union Court of Appeal in the case of *Yap Sow Keong & Anor. v. PP* [1947] MLJ 90 which was stated in these words:

> In our view the law as to the admissibility of retracted confessions in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the Court it satisfied of its truth.

This case went up to the Privy Council as *Osman & Anor. v. PP* [1968] 2 MLJ 137 but it would appear that the Privy Council did not disagree with this ruling of the Court of Appeal.

Even if corroboration is required for (P101) there is ample corroboration found in the evidence of (PW3) who conducted the post mortem of the deceased and the evidence of (PW9), the chemist, which connected the evidence bullets A and A1 and casings B and B1 to the pistol belonging to the first accused.

(P101) was again challenged in the main trial when Ag. DSP Bashir was recalled to tender the cautioned statement of the first accused (P119). This time Mr. Manjeet Singh drew attention to the apparent "lack of care" on the part of Bashir in recording P101 as compared to the recording of (P119). Several typing errors were pointed out in (P101). For example, at p. 4, line 65 "peti untu" has no meaning in Bahasa Malaysia; could it be "peti undi"? Again at p. 4, line 3 from the top "meneking" which should be "menengking". By contrast according to Counsel every small mistake in (P119) is initialled by Bashir. These typing mistakes in (P101) should not, in my view, be exaggerated. They could well have caused a serious problem to the prosecution if these mistakes occur in the material parts of the statement but in my view they do not. Secondly, it should not be overlooked that (P101) was typed out by Bashir himself who is not a typist by training or occupation but a police officer. Thirdly, in the case of (P119) Bashir was taking everything in longhand and what more he was taking a statement from a Minister of the Crown. One can imagine that Bashir must have been extra careful; even then events have shown that he was not that careful either. Therefore with respect I do not regard the typing mistakes in (P101) as important enough to affect the admissibility of the statement.

Mr. Manjeet Singh during submission urged me to reconsider my ruling on the voluntariness of the statement (P101) citing *R. v. Watson* 1980 2 All ER 293, on the power of the Judge not being precluded from reconsidering such a ruling at a later stage of the trial if further evidence justifies it. But it must be noted that it is also part of the judgment in that case that Judges should discourage Counsel from making such submissions where they are founded on tenous evidence.

What is the evidence relied on by Mr. Manjeet Singh here? First he referred to the so-called "admission" by SAC Yahya (PW29) that the "pressure" on Rahmat Satiman was lifted only after the tape recording was done on 9 June 1982. This, according to Counsel, was corroborated by entry 9216 (on instructions of Insp. Badaruddin) and entry 9598 (on blanket) in the station diary of the Gombak Police Station (105D). Secondly, it was contended also

that the classification at the top of the statement was changed from "A" to "B" - "A" being a witness and "B" an accused which Counsel contended implies that inducement or promise had been given to Rahmat Satiman. Thirdly, the apparent "lack of care" shown by Bashir in the recording of (P101) as compared to the recording of (P119) which I have referred to earlier.

Let me deal now with the so-called "admission" of SAC Yahya. The word "pressure" was in fact put to SAC Yahya during cross-examination. It is in SAC Yahya's evidence earlier which stands unchallenged that he did not know how the interrogation was done and that he issued no instruction on that. As regards the station diaries of the police station my view has already been expressed on the unreliability of some of the entries therein being on many occasions entered in a slip-shod manner. Finally the change of classification from "A" to "B" was done by the Investigating Officer and not by Bashir who recorded the statement.

It was also contended by Mr. Manjeet Singh that Bashir was not a truthful witness because subsequently in cross-examination he admitted that he had not only taken one statement but five statements. Even assuming that Bashir was lying on this point which is not in any case a material point in the issue, it would be wrong to say that because of this one lie the whole of his evidence must be rejected in toto - see *Khoon Chye Hin v. PP* [1961] 27 MLJ 107.

Therefore I do not consider all these grounds provided by Mr. Manjeet Singh sufficient basis for me to alter my finding on the voluntariness of (P101).

**(b) The law of s. 34 of Penal Code and s. 30 of Evidence Act**

In the consideration of the role of the confession of Rahmat Satiman in proving the charge against all the accused, the law of s. 34 of the Penal Code and s. 30 of the Evidence Act are relevant.

Under s. 34 of the Penal Code, to succeed the prosecution must prove that the criminal act was done in concert pursuant to the prearranged plan or arrangement. In practice it is of course difficult to procure direct evidence to prove the intention of an individual. In most cases, however, it can be inferred from his act or conduct or other relevant circumstances of the case. See *Mahbub Shah v. King-Emperor* 1945 IA Vol LXXII, 148, 153. The doctrine of common intention is as expressed in s. 34 of the Penal Code itself which reads-

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

It is also a common-sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually. If two or more persons combine in injuring another in such a manner that each person engaged in causing the injury must know that the result of such injury may be the death of the injured person, it is no answer on the part of anyone of them to allege, and perhaps prove, that his individual act did not cause death, and that by his individual act he cannot be held to have intended death. Every one must be taken to have intended the probable and natural results of the combination of acts in which he joined.

Thus it is clear that the leading feature of s. 34 of the Penal Code is the element of participation in action. Two preliminary elements are in fact necessary to fulfill the requirements of s. 34. Firstly there must be evidence (direct or by inference) the accused was present at the scene of the crime. Secondly, there must be evidence to show that there was prior concert or prearranged plan involving the accused. This is logical because how can there be participation without physical presence? Even passive participation may require physical presence.

I find no difficulty in holding the voluntariness and truth of P101. But what is its effect against the other accused? For the role of the confession as against the other accused persons s. 30 of the Evidence Act is relevant which reads as follows:

> When more persons than one are being tried jointly for the same offence, and a confession made by one of those persons affecting himself and some other of those persons is proved, the Court **may take into consideration** the confession as against the other person as well as against the person who makes the confession.

It is clear from a long line of authorities that a confession of a co-accused is **only an element** in the consideration of other evidence which evidence must be sufficient to support a conviction. In *Gunadhar Das v. State* [1952] AIR Cal 618 it was stated similarly:

> In short the conviction must be based on the other evidence. The confession can only be used to help to satisfy a Court that the other evidence is true.

H.T. Ong CJ, in *Herchun Singh* clarified the position clearly at p. 210 where he said:

> In our judgment, however, the proper interpretation of s. 30 is that of Bose J in *Kashmira Singh*, as follows:
>
> The proper way to approach a case of this kind is, first to marshall the evidence against the accused excluding the confession altogether from consideration and see whether 'if it is believed', a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, 'if believed', it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

The principle in *Herchun Singh* was reiterated by the same learned Chief Justice in another Federal Court case of *Yap Chai Chai & Anor. v. PP* [1973] 1 MLJ 219. Stated simply the principle is as follows. It would be proper for the trial Judge to take the confession of one accused into consideration against the other accused to lend assurance to other evidence against the other co-accused. In my view the operative words on the judgment in *Kashmira Singh* are the words "to lend assurance" which means that there must be other positive evidence against a co-accused before the confession of an accused can be called in aid to lend assurance to it. This principle is carried in many Indian decisions and I think it is a logical principle. If (P101) is to be permitted in law to be used against other persons without any more positive evidence against such persons, then not only should the four accused be in the dock now but also Abdullah Ambik (PW30) and Ma'dan who according to (P101) were at the scene of the crime and participated in the execution of the prearranged plan.

As to why the law is strict on the application of a confession of an accused person as against a co-accused is not difficult to appreciate because it is based on a very sound principle. Since a confession is neither required to be given on oath nor to be made in the presence of the other co-accused whom it implicates it is therefore not wrong to describe it as a very weak type of evidence which should not be allowed to form the basis or foundation of a conviction but should only be used in support of other positive evidence. This, in my opinion, is the intention of s. 30 of the Evidence Act when it uses the words "may take into consideration".

I am merely echoing the view of the Privy Council in *Bhuboni Sahu v. The King* [1947] AIR SC 257. Sir John Beaumont observed that:

a confession of a co-accused is obviously evidence of a very weak type ... The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence.

The result is therefore that in dealing with the confession of Rahmat Satiman as against the other accused the Court should not start with the confession but should begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the evidence then it is permissible to turn to the confession in order to receive assurance as to the conclusion of guilt of the co-accused.

Let me now deal with the evidence against the co-accused. First with regard to Nordin bin Johan, the second accused and Aziz Abdullah, the fourth accused. Apart from the confession of Rahmat Satiman the only evidence which purports to connect them with the death of Dato' Taha was that they were seen and identified by Atun (PW18) at about midnight on 13 April 1982 together with three others, namely Dato' Mokhtar, Aziz Tumpuk and Abdullah Ambik. Abdullah Ambik turned hostile to the prosecution and Aziz Tumpuk is dead. They were seen near a white car in Gan Kee Estate, 3½ miles away from the scene of the crime and about 1½ hours before the time of the murder. In a somewhat similar situation Matthew CJ said in the judgment of the Court of Appeal in *Yusoff & Anor. v. PP* [1956] 22 MLJ 47 @ p. 49.

Quite apart from this, even accepting the confession of the 2nd appellant as being both voluntary and true, there is the question whether the confession was sufficient to establish the guilt of the 1st appellant. Section 30 of the Evidence Ordinance reads:

> When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court **may take into consideration** such confession as against such other person as well as against the person who makes such confession. (The emphasis is ours)

The effect of the words "may take into consideration" is well set out in Woodroffe & Ameer Ali's *Law of Evidence*, 9th Edn., at pp. 312 & 313 as follows:

> These words do not mean that the confession is to have the force of sworn evidence, but such a confession is nevertheless evidence in the sense that it is matter which the Court, before whom it is made, may take into consideration in order to determine whether the issue of guilt is proved or not. The wording, however, of this section (which is an exception) shows that such a confession is merely to be an element in the consideration of all the facts of the case; while allowing it to be so considered, it does not do away with the necessity of other evidence.

The other evidence is of little, if of any, value and merely shows that the two appellants were seen together about midnight on 19/20 September 1955. In fact, the convictions rest entirely on the confession of the 2nd appellant which we have already pointed out is wrong.

Thus, apart from the identification of Aziz Abdullah by PW18 in Gan Kee Estate that night there is absolutely no other evidence against him except what is stated in the confession of Rahmat Satiman.

As regards Nordin Johan there are of course other evidence namely the examination of his white Mercedes car registration No. WN 76 by PW9 (the chemist) which, however, bore negative results. According to the chemist, there was no evidence of tampering of the number plates. Then there was also evidence of his visit to the Dy. CPO Negri Sembilan (PW28) to inform the latter of the probable identity of the night caller to the house of the late Dato' Taha on the right in question. Finally there was evidence of his visit to the funeral (without

his beard!). All these in my opinion have no real probative value to the charge and even taken as a whole do not take the prosecution anywhere for the purpose of s. 34 of the Penal Code.

I admit there is a lot of suspicion cast on Nordin Johan and Aziz Abdullah. I will not conjecture how they will live out this suspicion. But in our system of administration of justice suspicion, however strong, cannot be a substitute for proof by admissible evidence.

As regards the first accused, Dato' Mokhtar Hashim, the position is entirely different. With respect I disagree with Mr. Jagjit Singh on the non-probative value of the gun licence (P16). My reading of s. 4(5) of the Arms Act 1960 clearly makes P16 an original document (as original at least as the register) and therefore constitutes the best evidence of its contents - see also *Ong Kim Piau v. PP* [1956] 22 MLJ 47. I also disagree with the contention that the prosecution's failure to call PC Md. Sani as a prosecution witness is fatal to the chain of evidence with regard to the gun (P88) etc.

In my view there is no real gap at all in the prosecution chain of evidence as far as gun (P88) is concerned. The gun and the gun licence (P16) were handed by PC Md. Sani to Insp. Rashid (PW31) pursuant to a request by conversation between SAC Yahya (PW29) and the first accused. This is in evidence. Again when SAC Yahya later went to see the accused in his office SAC Yahya was asked by the accused if he had received the gun. There is therefore no fatal break in the chain of evidence - see also *Su Ah Ping v. PP* [1980] 1 MLJ 75.

Mr. Jagjit Singh also contended that letter (P17A) purporting to be from the first accused to SAC Yahya was not proved because the signature of the first accused was not proved. I think here the contents of the letter speak for itself which refers to a telephone conversation between SAC Yahya and the first accused. Seen in the context of the other evidence it is not essential that the signature of the first accused should be formally proved. In fact the contents of the letter (P17A) also confirms that the first accused was the owner of gun (P88).

As regards Rahmat Satiman, although (P101) did not state that he fired the shots which killed the deceased, it is crystal clear that the statement fully admitted his participation. Participation does not mean merely the doing of the act confined to the specific commission of the crime. Thus it is true that Rahmat Satiman did not fire the shots nor did he take part in binding the hands and eyes of the deceased before the shooting but it was Rahmat Satiman who had prepared the incense into five parts supposedly to weaken the deceased and had them strewn and burnt all around the compound of the deceased's house as instructed to him by the bomoh in Johor Bahru; and all these acts, I regard, were part and parcel of the planning and execution of the crime.

To summarise, it would therefore appear that having regard to the prosecution evidence adduced so far, a *prima facie* case has not been established against Nordin Johan and Aziz Abdullah, the second accused and the fourth accused which, failing their rebuttal, would warrant their conviction. In other words if they elect to remain silent now (which I hold they are perfectly entitled to do even though they are being tried under the Emergency Regulations) the question is can they be convicted of the offence of s. 302 read with s. 34 of the Penal Code? My answer to the question is in the negative.

Again, does the totality of the evidence against the second accused and the fourth accused excluding the confession (P101) lead the Court to the irresistible interference that they were present at the scene of the crime and participated in the commission of the offence? I am afraid I am unable to honestly give an affirmative answer to this question. It has been said

again and again by the highest judicial authorities that the onus on the prosecution where the evidence is of a circumstantial nature is a very heavy one and that the evidence must point irresistibly to the conclusion of the guilt of the accused.

Following the guideline by Lord Diplock in *Haw Tua Tau v. PP* [1981] 2 MLJ 49 on what is meant by the words "if unrebutted" it is my view that a *prima facie* case has been made out against Dato' Mokhtar Hashim, the first accused and Rahmat Satiman, the third accused.

My order therefore is as follows:

(1) Second accused and fourth accused are hereby acquitted and discharged;

(2) First accused and third accused are called upon to enter their defence.

**JUDGMENT**

**Hashim Yeop Sani FJ:**

The charge reads as follows:

> That you on 14 April 1982 at or about 1.30 a.m. at Kampong Sri Asahan, Gemencheh, in the District of Tampin, in the state of Negeri Sembilan, in furtherance of the common intention of you all, did commit murder by causing the death of one Dato' Mohd. Taha bin Talib, and that you have thereby committed an offence punishable under s. 302 of the Penal Code read with s. 34 of the said Code.

The prosecution had earlier in the proceeding sought to admit the cautioned statement of Rahmat Satiman. Based on *Johnson Tan Han Seng v. PP* [1977] 2 MLJ 66, the defence challenged the voluntariness of the statement. The question of voluntariness of the statement (P101) was dealt with in my written ruling dated 8 November 1982. The ruling was that P101 was voluntary and admissible but did not deal with the question of its truth. Because at the close of the prosecution case the defence submissions raised important issues of facts and law, I felt that basing on *PP v. Sihabduin & Anor* [1980] 2 MLJ 273, a full review of the prosecution's evidence adduced was necessary and this review is contained in a written decision dated 31 December 1982.

The central issues I dealt with in the written decision included the law of s. 34 of the Penal Code and s. 30 of the Evidence Act. Based on what I considered the proper principle to adopt following a long line of authorities I acquitted Nordin Johan and Aziz Abdullah without calling for their defence. In simple language the principle is this. A man can be convicted on his own confession. But a man cannot be convicted on the confession of another unless there is sufficient evidence, independent of the confession, to warrant his conviction. Defence was however called in respect of Dato' Mokhtar and Rahmat Satiman.

Regulation 17 of the Essential (Security Cases) Regulations 1975 as amended by PU (A) 362/75 reads as follows:

> The Court shall decide on the guilt or innocence of the accused only at the conclusion of the case for the defence, and it shall so decide upon hearing and considering the evidence of both the prosecution and the defence as a whole, having regard to the justice of the case, without regard for the technicalities of the rules of evidence or procedure, or for any defect concerning the charge.

There are therefore three principal duties imposed on the trial Judge before making his decision at the conclusion of the trial. They are-

(1) He shall decide upon hearing and considering the evidence of both the prosecution and the defence as a whole;

(2) He shall have regard to the justice of the case; and

(3) He shall in arriving at his decision disregard technicalities of the rules of evidence or procedure.

The sting of this regulation is of course carried in the third limb of the regulation and it is in fact the object of attack by the purists amongst the lawyers. But fortunately the problem does not arise in this case because both the prosecution and the defence adhered as far as possible to the normal rules of evidence.

In my opinion the first and the second limb of reg. 17 carry the normal functions of a Court, that is to say to have regard to the totality of the evidence and the justice of the case. These provisions do not, however, in any way lessen the burden of the prosecution to prove their case beyond reasonable doubt and that this burden never shifts. Therefore the test to apply at the end of the defence is still the normal test, that is whether the defence has cast a doubt on the truth of the prosecution story. To warrant an acquittal however the doubt created must not merely be a fleeting doubt or a capricious doubt but a doubt in respect of which a substantial reason can be given. The question to ask now is - has the defence evidence created a reasonable doubt on the truth of the prosecution story?

As the defence of Rahmat Satiman is less complicated I propose to deal with his defence first. In substance the defence of Rahmat Satiman consists of the following parts:

(1) the request for review of the question of voluntariness of his cautioned statement (P101);

(2) the legal consequences of the impeachment of Rahmat Satiman;

(3) the alibi; and

(4) the testimony of Mr. Fassnacht.

The grounds relied on for the request to review the ruling on the voluntariness of P101 would seem to be the following evidence:

(a) the evidence of Zainal Abidin (DW40) who was detained in the Gombak Police Station from 23 to 31 May 1982. According to this witness he knew what happened to Rahmat Satiman from the time the latter was brought to the same police station on 29 May 1982 up to the time when DW40 left the police station on 31 May 1982.

(b) The police statement made by Md. Ajib (DW29) which statement (P107A) was used to impeach the credit of DW29. The said statement was made on 20 June 1982 which date was of course prior to 23 June 1982 being the date of the cautioned statement (P101). According to the defence this shows that SAC Yahya (PW2) and Insp. Badaruddin (PW1) in the trial-within-a-trial were not telling the truth about the alibi given by Rahmat Satiman; and

(c) the evidence of Rahmat Satiman himself (DW2) as a witness in the defence in the main trial.

As regards to ground (a) I find that the evidence of DW40 is far from satisfactory not because he is a convicted criminal but because of the quality of his evidence. The confinement of Rahmat Satiman to a cell by himself (and not with DW40 and others in the other cell) was as I said in my written ruling a clear indication that Rahmat Satiman was treated as a detainee under the ISA and not as a common criminal. DW40's evidence as to the state of dress or

undress of Rahmat Satiman is also not conclusive because Rahmat Satiman was not in DW40's view at all times of the detention. DW40's evidence as to the serving of food by two small boys and the condition of food is contrary to the evidence of Rahmat Satiman himself in the trial-within-a-trial. Lastly DW40's evidence as to what happened in the Bilik Gerakan when DW40 was with Insp. Aziz in Insp. Aziz's room is improbable because it is highly unlikely that Insp. Aziz would have informed DW40 who was actually in the Bilik Gerakan then and it is also unlikely that the door of the inspector's room was ajar ("because he was feeling hot") if the air-condition of the room was on at that time.

As regards ground (b) there is ample evidence of simultaneous interrogations of several detainees in relation to this case carried out by the police and it is therefore not a fair assumption to make that the statement taken from Md. Ajib was necessarily the result of information received from Rahmat Satiman and no other. Even if it was, it is in my opinion hardly relevant to the question of the voluntariness of P101.

As regards ground (c) namely the evidence of Rahmat Satiman himself it is to be noted that there are many new and serious allegations made by him in the witness box in the main trial. Among the new allegations are:

(1) He was beaten up so badly by the police that he urinated blood and at times unable to walk without support;

(2) there were times when cold water was poured over him at night;

(3) when he was giving his statement to Bashir, Insp. Badaruddin punched him from behind;

(4) two boys, aged 16-18 years, sent food to him and not police officers as he said in the trial within-a-trial.

All these new and serious allegations should, if true, have come out during the intensive and severe cross-examination he underwent in the trial-within-a-trial. I am therefore more inclined to the view that all these new allegations are merely afterthoughts. Therefore I do not consider that any of the grounds constitutes sufficient basis to review the question of voluntariness of P101.

The second point raised on behalf of Rahmat Satiman was also raised on behalf of Dato' Mokhtar. This is the effect of the impeachment of the credit of Rahmat Satiman. In the course of his cross-examination in the main trial Rahmat Satiman was confronted by the Attorney-General with the various contradictions between his evidence in Court and the cautioned statement he had made (P101). The Attorney-General then applied to proceed for impeachment but I deferred the ruling on impeachment and requested the Attorney-General to proceed instead with his cross-examination to enable me to assess Rahmat Satiman on the whole of his evidence. Since the proceeding for impeachment was not yet allowed or completed the question as to the consequences of impeachment is, to my mind, merely academic. It would seem to be the proposition advanced by both Counsel that since the credibility of Rahmat Satiman becomes doubtful because of his previous inconsistent statements (P101 and-P102) his testimony in Court should be accepted as the truth. In my opinion this proposition is over-simplistic and there is no such inflexible rule of law or practice. The trial Court has inherent powers to assess and evaluate the testimony of a witness and the question of credibility of a witness is a subject within the domain of the trial Judge.

Thirdly it is the contention on behalf of Rahmat Satiman that he has established his alibi satisfactorily. The question whether an alibi is satisfactorily established or not depends in the final analysis on the credibility of the witnesses involved. It is not incorrect to say that an alibi is as good as its witness.

To establish his alibi Rahmat Satiman brought 14 witnesses (DW29 - DW42) covering the period 13 to 14 April and places like Muar, Pontian and Johor Bahru.

The core of his alibi evidence however is the evidence pertaining to his sojourn in Johor Bahru on the night of 13 April 1982. It is his evidence that he spent the night in the house of his friend, Md. Ajib (DW29). Both DW29 and his wife, Maspupah (DW39) were however impeached based on material contradictions in their evidence and the police statements. In my opinion even if they were not impeached, all evidence pertaining to Rahmat Satiman's night sojourn in the house of DW29 should be rejected as being highly improbable on the following grounds:

(a) According to Rahmat Satiman the purpose of his wanting to sleep in Md. Ajib's house was to have a discussion with Ajib on the arrangement of food on the marriage of his daughter, Hanisah (DW42) on 17 April 1982. I find this difficult to accept as reasonable or probable reason to put up for the night in Md. Ajib's house because in his own evidence Rahmat Satiman said he only wanted to find out how many gantangs of rice to cook for so many people and whether to cook white rice or "nasi minyak". In the same cross-examination he said also he had handed the responsibility of cooking to another person in Kampung Repah. These are inconsistent propositions in the same testimony. The topic for discussion is not such a difficult problem that it could not be solved by someone from Kampung Repah itself.

(b) Another reason given by Rahmat Satiman for stopping at Md. Ajib's house on 13 April 1982 was to hand over the invitation cards for the wedding personally to Md. Ajib and also to hand over other cards to be sent by hand by Md. Ajib to other friends. This too is highly improbable because if Md. Ajib was a close friend it would have been a normal act of courtesy that he would be invited much earlier than 13 April 1982 for the wedding on 17 April 1982 because there is evidence that the wedding date had been fixed as early as January/February 1982 and wedding cards had been printed and sent out to outstation friends as early as February/March 1982.

Another aspect Rahmat Satiman's alibi in Johor Bahru which is also highly improbable is the "kenduri" in Omar Jayadi's house (DW36). Although DW36 is only a grass cutter with the Municipality Johor Bahru he was a clever witness in the sense that he answered all questions promptly without hesitation and as a result made a number of inconsistent statements pertaining to the "kenduri" which are very difficult to reconcile. First, he said the "kenduri" was a "doa selamat" for his daughter who was going to a secondary school, English College, Johor Bahru. He also said the "doa selamat" had been planned on 9 April 1982 which was on Friday being the closing date of the school and that he had planned the "kenduri" to be on the following Tuesday which was 13 April 1982. In his cross-examination however he said that the "kenduri" was held in honour of his daughter going to a secondary school as a clerk transferred from English College to Sekolah Kebangsaan Majidee, Johor Bahru and that he was grateful for the transfer because the daughter saved RM70 in bus fare. A little while later he said that the daughter had not yet been transferred and that she was transferred only in January 1983. Finally in reexamination he said that he chose Tuesday because that was the daughter's birthday.

Reading DW36's evidence together with the evidence of Hj. Kasbun (DW34) and his grandson, Salleh (DW35) (both of whom did not significantly specify the date of the "kenduri") it was more probable that there might have been a "kenduri" held some time in April 1982 as stated by Hj.Kasbun but it was certainly not on 13 April 1982.

The other aspect of Rahmat Satiman's alibi is his diversion to Kampung Serkat in Pontian on 13 April 1982 which I also found difficult to accept as probable. This is because of the many material contradictions between the evidence of his sister, Zaleha (DW32), Rahmat Satiman and Cikgu Ramli (DW33). In fact DW32 did not really remember the date or the month that Rahmat Satiman took her from Pontian to Johor Bahru. From her evidence it is clear that DW32 did not know the date or the month. Contrary to what Rahmat Satiman had said, DW32 testified that in her absence one Idris, her neighbour staying closer to her than Cikgu Ramli, took care of her house and not Cikgu Ramli. Cikgu Ramli (DW33) was an evasive witness who was not even willing to disclose the distance from his house to the house of DW32 (he only said "three lots away"). It is obvious from his evidence that he was only trying to help establish an event that did not take place on 13 April 1982.

Except for Md. Ajib and his wife (DW29, DW39), Tunku Besar Tampin (PW28), the two members of the staff of Maktab Adabi Maharani in Muar (DW30, DW31), Cikgu Ramli, Hj. Kasbun, Salleh and Omar (DW33, DW34, DW35, DW36), the rest of the witnesses for the alibi of Rahmat Satiman were his own relatives whose testimonies are neither impressive nor satisfactory.

The other relevant dates and times in respect of which Rahmat Satiman's witnesses also testified were 10 April 1982 at 10.30 a.m. and 11 April 1982 at 11.30 p.m.

According to P101 Rahmat Satiman on 10 April 1982 at 10.30 a.m. went as agreed to Tampin UMNO House to see Dato' Mokhtar. It was at this meeting that he said that Dato' Mokhtar became angry and yelled at him for hesitating in the plan. Then Rahmat Satiman said he gave an undertaking to get a bomoh.

Rahmat Satiman brought Tunku Besar of Tampin (DW28) to testify that some time in the month of April 1982 Rahmat Satiman came to his office to personally invite him to the daughter's wedding on 17 April 1982. The Tunku Besar also said that Rahmat Satiman left his office at "nearly 10.30 a.m." In my opinion even if I accept that the day referred to by the Tunku Besar was in fact 10 April 1982 there is nothing improbable about Rahmat Satiman going to the UMNO House which is also in Tampin after leaving the Tunku Besar's office and to keep his appointment at about 10.30 a.m. with Dato' Mokhtar as stated in P101.

The alibi of Rahmat Satiman for 11 April 1982 at 10.30 p.m. was that he was at his house repairing collapsing tents as a result of heavy rain. This is supported by the evidence of Manisah (DW42). According to P101 on 11 April 1982 as agreed Rahmat Satiman went to Dato' Mokhtar's house and at 11.30 p.m. Dato' Mokhtar returned with Abdullah Ambik, Nordin Johan and Yunus Ariffin, Rahmat Satiman said he went close to Dato' Mokhtar and whispered to him to ask for money to go to Johor Bahru to meet "Lek" the bomoh. Whereupon Dato' Mokhtar invited him to his room and handed him RM300 and told him to use the balance to buy election box, if necessary.

According to the evidence of Manisah (DW42) the "adat perkampungan" ceremony was held on 11 April 1982. She explained that the "adat perkampungan" ceremony merely means the putting up of tents, tables and chairs. It started at 8.00 a.m. and ended in the afternoon. She said it rained heavily that night and the tents were about to collapse and her father and others helped to repair the tents. No time was, however, given by Manisah as to when the rain started and when the tents were about to collapse. The only thing she mentioned was that the rain started after "Drama Minggu Ini" on TV. Even assuming that her evidence is true (which I doubt) there is nothing improbable about the meeting between Rahmat Satiman and Dato' Mokhtar at about 11.30 p.m. that night as stated in P101. He was not only a Ketua

Kampung of Repah but also the UMNO chief there and as such the menial work of repairing collapsing tents could easily have been delegated to some lower person. After all in our society the Ketua Kampung or the Ketua Cawangan UMNO is a highly respectable personality in his kampung and Rahmat Satiman could not have found any difficulty in finding a volunteer to do the work for him.

The truth of P101 is affirmed not only by the failure of Rahmat Satiman to establish his alibi but also by the nature of his testimony regarding his visit to see "Lek" the bomoh in Scudai, Johor Bahru on 13 April 1982. In his testimony he did not deny his visit to "Lek" but merely gave another reason for the visit. In P101 it is stated that the visit was to further the plan to eliminate the late Dato' Taha. In his testimony the visit to "Lek" was partly to invite the bomoh to Manisah's wedding and partly to get the bomoh's assistance to ensure the victory of the Barisan National in the 1982 general elections in Tampin. He said "Lek" advised that it was not necessary to give talisman to all the candidates but only to Dato' Mokhtar since he was the candidate for the Federal constituency of Tampin which included all the four State constituencies. He said he got the talisman and "kemenyan" for Dato' Mokhtar and gave them to him on 16 April 1982. It seems to me that the version given in his testimony as to why he visited "Lek" the bomoh in Johor Bahru is too ridiculous to be accepted as true because he said that no one had asked him to do all these. Why then should he impose upon himself a task which no one expected him to do.

Thus looking at the evidence objectively Rahmat Satiman has in my opinion failed on the balance of probability to establish his alibi for the night of 13 April 1982 to the early hours of 14 April 1982.

The last witness called by Rahmat Satiman was one Mr. George Fassnacht (DW43). The calling of this witness was a surprise move as it had been clearly stated at the commencement of the defence proceeding that the defence of Rahmat Satiman was one of alibi and separate from the defence of Dato' Mokhtar. Be that as it may Mr. Fassnacht went into the witness box. Mr. Fassnacht was brought to challenge the evidence of Mr. Gee (PW9), the government chemist. DW43 is a self-styled "private firearms expert" from the USA.

There are three factors which one would not fail to notice with regard to Mr. Fassnacht. Firstly, earlier in the proceeding defence Counsel for Dato' Mokhtar, Mr. Jagjit Singh, applied for permission of the Court to release the exhibits pertaining to the firearm, namely the gun (P88), the evidence bullets and casings (A and A1, B and B1) to be examined by Mr. Fassnacht, and that the use of the comparison microscope from the Chemistry Department be made available to him. I asked if this person would be a witness but Counsel was unable to say until the exhibits were examined. I disallowed the application for the simple reason that Court exhibits should not be released to strangers. I would have no hesitation to allow a witness to examine any of the exhibits. I was also of the view that an expert should be able to give at least a preliminary opinion based on the 14 comparison photographs of the evidence and test bullets already in the possession of the defence. But strangely enough when Mr. Fassnacht finally took the stand in the witness box as DW43 no evidence was led of his opinion on the said 14 photographs.

Secondly, before the evidence of Mr. Fassnacht can be accepted as evidence of an expert I must first be satisfied as to his qualification or experience as a firearms identification expert. His qualification as stated by him in the witness box is a BA Degree in Government from La Salle College and his experience consisted of his posting in Aberdeen Proving Grounds in the United States, three years with the CIA and one year with the Government of Singapore dealing in "intelligence and technical" aspects of firearms. The question is - is Mr. Fassnacht

peritus? Because his academic qualification has nothing to do with science and his experiences are all in foreign countries, I find it difficult to say with certainty that Mr. Fassnacht is peritus without any further proof of his qualification or experience. From his testimony he seems to know a lot about guns and other firearms but that does not necessarily make him a firearms identification expert. In cross-examination he maintained that there is no distinction between a firearms identification expert and a ballistics expert whereas it seems to have generally been accepted by the authorities that firearms identification deals primarily with the study of microscopic marks appearing on the surfaces of fired bullets, cartridge cases and shot-shell casings, whereas ballistics deals with the study of the motion of projectiles.

In any case his evidence consisted entirely of -

(1) criticising the methods used by Mr. Gee and the police (Mr. Tham and Mr. Sohan Lal) in the firing and the collection of test bullets;

(2) the use of shooting box with blankets or cotton waste instead of water tank; and

(3) the alleged failure of Mr. Gee to ensure that he obtained the best available specimen for examination and comparison.

Mr. Fassnacht only visually examined slug A. I find Mr. Fassnacht's evidence neither acceptable nor wholesome enough to cast any doubt on the veracity of Mr. Gee's evidence.

The defence for Dato' Mokhtar is much more intricate than that of Rahmat Satiman. Briefly Dato' Mokhtar's evidence can be divided into five separate parts namely -

(1) His alibi;

(2) The attack on Atun's (PW18) evidence;

(3) The attack on Sudin's and Datin Norsiah's evidence (PW22 and PW23);

(4) The contention that the prosecution has not discharged its burden of proving that Dato' Mokhtar was in custody and control of his gun (P88) at all times during the material period; and

(5) The attack on Mr. Gee's evidence (PW9).

***First the alibi***

He brought 25 witnesses to support his alibi which covers the period and times mentioned in P101, namely 8, 10, 11 & 13 April 1982 through to the early hours of 14 April 1982. The events on which the alibi is based on the different dates are-

(1) the ceramah held in Cikgu Ahmad bin Arshad's house (DW12) on 8 April 1982 purporting to last from 10.00 p.m. to 12.00 midnight.

(2) the Kursus Siviks Wanita UMNO at Palong Lima on 10 April 1982 purporting to last from 10.00 a.m. to 12.00 noon followed by a wedding at Palong Satu and the meeting of "Ketua Peti Undi" at Palong Dua which ended at about 5.30 p.m.

(3) the basketball tournament in Gemas on the night of 11 April 1982 supposedly to have ended only at about 11.00 p.m.

(4) the ceramah at the Hindu Temple Gemas at 8.30 p.m. followed by the ceramah at Masjid Geduk where Dato' Mokhtar was supposed to have arrived at 10.00 p.m. and left at about 11.00 p.m. for Bukit Jalur.

The vital part of his alibi is the alibi for the night of 13 April 1982 up to the early hours of 14 April 1982. It is the defence case that after leaving Masjid Geduk Dato' Mokhtar and his bodyguard PC Sani (DW27) left for Bukit Jalur, but after meeting Olan on the way, made a U-turn and returned to Gemas where at the Bilik Gerakan Gemas Dato' Mokhtar signed a Visitors Book (D112A) which indicated the time as at 11.55 p.m. on 13 April 1982. From Gemas he left in the jeep with PC Sani back to his house in Taman Clonlee, Tampin arriving there at about 12.40 a.m. It was also the defence story that after his return at about 12.40 a.m. until the next morning of 14 April 1982 Dato' Mokhtar never left his house at Taman Clonlee, Tampin. To support this part of the alibi he brought amongst others Tan Chin Boon (DW11), Abdul Manaf (DW17), Rashidi (DW19), Nawawi (DW21), Suroya bin Selamat (DW22) and PC Sani (DW27).

Since the establishment of an alibi satisfactorily depends so much on the credibility of the witnesses involved, I propose to deal first with the witnesses referred to above.

First, the testimony of Tan Chin Boon (DW11). This witness deals with two events, namely the basketball tournament in Gemas on the night of 11 April 1982 and the alibi of Dato' Mokhtar on the night of 13 April 1982. There is no difficulty in accepting that there was in fact a basketball tournament in Gemas on the night of 11 April 1982. But what remains to be decided is whether it is true that Dato' Mokhtar left Gemas only at 11.30 p.m. for Tampin. There is evidence that the basketball games started at 8.30 p.m. and ended at 11.00 p.m. This is also evidenced by Y.B. Mohd. Salleh (DW14) that Dato' Mokhtar left before he left and that he left between 11.30 p.m. and 11.45 p.m. Since time must necessarily be approximate especially of events nearly a year ago, the meeting described in P101 as at about 11.30 p.m. on 11 April 1982 is not improbable.

The evidence of Anthony Sim (DW5) was supposed to help establish the alibi that Rahmat Satiman could not have been at Taman Clonlee on 11 April 1982 as it was "raining heavily" was demolished by the evidence of Rashidi (DW19) who categorically denied that any Chinese man slept at the house when he was there on 9 April 1982, 10 April 1982, 11 April 1982 and 12 April 1982.

I regard DW11's evidence about his presence in Dato' Mokhtar's house on the night of 13 April 1982 highly suspect because he himself said that he had no particular reason to stop at Dato' Mokhtar's house. Furthermore if he had bought the Kentucky Fried Chicken to give to Dato' Mokhtar or the election workers it is Manaf's evidence that Tan ate the chicken himself in the hall of the house. DW11 claimed he was in the hall until Dato' Mokhtar returned. Of all the Ministry officials called to give evidence as to what happened that night at 513 Taman Clonlee, Tampin only Manaf (DW17) mentioned anything about Tan and his Kentucky Fried Chicken. Nawawi (DW21) mentioned the presence of Tan that night in the house but there was no mention of his eating Kentucky Fried Chicken. Tan said he was in the hall until Dato' Mokhtar returned. PC Sani (DW27) categorically stated however that on arrival at Taman Clonlee he entered the house and the people he saw were Ali Ngah, Olan, Rashidi, Manaf, Ismail Mat, Salleh and Nik but no mention of Tan. Rashidi (DW19) also described persons in the hall of the house just before the return of Dato' Mokhtar but did not mention the presence of Tan. Thus if according to Manaf Tan was present in the house eating his Kentucky Fried Chicken in the hall it is unlikely that such a sight is not remembered by all the others. Manaf admitted in his cross-examination that he did not say anything about Tan with his Kentucky Fried Chicken in his statement to the police.

The core of the evidence of alibi of Dato' Mokhtar for the early hours of 14 April 1982 is contained in the evidence pertaining to his alleged massage and meeting of the Ministry officials in his bedroom purportedly around 1.30 a.m. to 2.30 a.m. Directly related to the alleged meeting of officials with the Minister was the alleged visit of Dato' Mokhtar to Penajis where it is said that he met Manaf (DW17). Indirectly related to this same meeting of officials with the Minister was the signing of the Visitors Book (D112A) at Bilik Gerakan Gemas on 13 April 1982. Since all three events are inter-connected I will deal with them together.

First, the alleged meeting between Dato' Mokhtar and Manaf at Penajis. According to Dato' Mokhtar in his evidence in the afternoon of 13 April 1982 he drove a jeep (which he found in front of his house meant to be used for the election) to test drive it and proceeded to Kota and then to Astana Raja through Kampung Tiga Nenek and then to Kampung Legoh Ulu where he stopped at a coffee shop. After that he went to Bilik Gerakan Astana Raja and from there he visited a Risda project and was invited to taste hot "dodol" by a villager who was preparing it for the wedding of his daughter. Then he drove alone to Penajis where he met Manaf (DW17) who reminded him to go home early as the Minister had a ceramah at Geduk.

In my opinion his visit to Penajis and the meeting with Manaf never took place for the following reasons. Manaf in his statement to the police did not mention he visited Penajis and did not put Penajis as a place he visited in his claim for mileage allowance for April 1982 although in his evidence he said the visit was official and that the total mileage in the claim is important. Secondly, he said he reminded Dato' Mokhtar of his ceramah in Masjid Geduk that evening because he remembered seeing it referred to on a blackboard in the house at Taman Clonlee. But PC Sani (DW27) categorically stated that the blackboard in Taman Clonlee was meant only for youth activities and he had during his stay in Tampin to go to the UMNO Building to get the programmes for Dato' Mokhtar. Incidentally it was also at Penajis that Manaf was alleged to have suggested to the Minister that because of several complaints about the youth civics courses, a meeting should be held that night at Taman Clonlee to which the Minister agreed. I will deal with this point later.

The Visitors Book (D112A) is produced by the defence to show that as at 11.55 p.m. Dato' Mokhtar was at the Bilik Gerakan Gemas from where he proceeded home to Taman Clonlee, Tampin arriving at the house at about 12.40 a.m. I have grave doubt about the truth of D112A. Firstly, no other Bilik Gerakan in the whole of the Tampin constituency kept a Visitors Book. D112A according to Y.B. Mohd. Salleh (DW14) was the result of the idea of his assistant, Cikgu Kamaruddin (DW16) assigned to take charge of Bilik Gerakan Gemas. Y.B. Mohd. Salleh said he was not in favour of a Visitors Book because previously it had worked to his disadvantage because whoever came and signed their names in the book wanted repayment of expenses. So he said he reluctantly agreed to the idea of Cikgu Kamaruddin subject to confining the book only to three categories of people, namely the Ahli Jawatankuasa Bahagian, Ahli Jawatankuasa Perhubungan and those from outside Gemas. According to Cikgu Kamaruddin the object of keeping the Visitors Book was to obtain comments for improvement. In my opinion D112A is highly suspect firstly because the restriction to the three classes of persons who can sign the book defeats the very object of maintaining the book. In fact on perusal I found no comments were noted at all in the book for improvement of the Bilik Gerakan. Secondly, the names that appear in the book prior to 13 April 1982 are all familiar names. The first entry was by Abdullah Ambik and the last entry was also by Abdullah Ambik. Thirdly, Abdullah Ambik signed twice but Dato' Mokhtar signed only once although there is evidence that Dato' Mokhtar visited the Bilik Gerakan more than once.

The so-called meeting of officials with the Minister in the early hours of 14 April 1982 is difficult to accept as true for the following reasons. Manaf (DW17) suggested the meeting purportedly to discuss implementation problems of the civics courses. But the coordinator of the civics courses was Suroya bin Selamat (DW22) who in his evidence said he was responsible for the arrangement and planning of these courses and the problem was only with regard to the time to begin the course so as to attract youthful audience. According to him it should begin at 3.00 p.m. instead of 2.30 p.m. He also said that before the night of 13 April 1982 Manaf did not speak to him about the problem. He also said that as coordinator of these courses, he had received no feedback therefore could not have known of any problems. He also said in his cross-examination that before 13 April 1982 he did not receive any complaints of any dissatisfaction. What was therefore the problem which required ministerial decision in an urgent meeting at such an unearthly hour? I am of the view therefore that this so-called meeting is all fiction and that all evidence pertaining to the meeting is fabricated.

The satisfactory establishment of an alibi depends so much on the credibility of the witnesses involved. It is clear that three principal witnesses constitute the pillars of the alibi of Dato' Mokhtar on the night of 13 April 1982 to the early hours of 14 April 1982. They are Abdul Manaf (DW17), Rashidi (DW19) and PC Sani (DW27). There were seven ministerial officials in all supposedly present at 513 Taman Clonlee, Tampin during the material period but other than these three principal witnesses the others are in my opinion merely props to support the testimonies of the principal witnesses. If the evidence of the principal witnesses failed to establish the alibi the evidence of the supporting witnesses must also necessarily fail.

First, Abdul Manaf (DW17). He is a 39-year old official in the Ministry of Culture, Youth and Sports of which Dato' Mokhtar was and is still the Minister. Manaf was at the material time the Director of Youth (Training). Although he was stationed at the Ministry it would appear that at least throughout the election period in 1982 he was based at the rented house of Dato' Mokhtar at 513, Taman Clonlee, Tampin. It was also disclosed in cross-examination that apart from other duties he also sometimes did the marketing for the house. According to him he was not invited by Dato' Mokhtar to stay in the house but was invited by the other officers. Looking at the evidence as a whole I am inclined to the conclusion that Manaf was closely connected with Dato' Mokhtar over and above the normal relationship between Minister and senior official. In the witness box Manaf did not seem to be very sure of his facts and his answers especially in cross-examination were too often punctuated by the words "Saya tidak pasti" ("I am not sure"). There are many indications in his testimony that he is not a witness of truth. For example the trip to Penajis which he claimed to be official yet he did not make any claim in the April statement of claim for milage allowances; and there is the reason for the urgent meeting with the Minister in the early hours of 14 April 1982 which apparently concerned the timing and contents of the courses in respect of which the coordinator of the courses, Suroya (DW22) had had no feed back until very night of 13 April 1982; and then there was the reminder by him to the Minister of the Minister's ceramah in Masjid Geduk which he said he knew from the blackboard in the house at Taman Clonlee contrary to the evidence of PC Sani (DW27). Finally the highly suspicious manner in which Manaf said he remembered the time Dato' Mokhtar came back at 12.40 a.m. and he looked at his watch and saw it was 12.40. a.m. Then he said "this registered in my mind until today". Thus my assessment of Manaf is that he is not a witness worthy of belief.

Secondly, the testimony of Rashidi (DW17), another senior officer of the Ministry. At the material time he was the Director of Youth, Culture and Sports of Selangor. Yet strangely enough he was not in Selangor but more or less resident in Negeri Sembilan during the

material period. This he admitted quite frankly when he said that in all his mileage claims as Director of Youth, Culture and Sports, Selangor he used as his permanent address the house of his father-in-law No. 100 Jalan Bukit Kuda, Klang, and certified that address as his correct address even though he was resident in Negeri Sembilan. He also disclosed that his relationship with the Minister is not new. According to him he had known Dato' Mokhtar even before the latter joined the government some time in 1966. He is in this regard very frank in his testimony. His friendship with the Minister continued since 1966 and that his personal relationship with the Minister is close which is hardly surprising because it is the defence story that Rashidi massaged the Minister during the so-called meeting held in the early hours of 14 April 1982. Looking at his evidence as a whole I am also inclined to the conclusion that the testimony of Rashidi is largely suspect.

Finally the testimony of PC Sani (DW27). This police constable should have been the star witness who could establish the alibi of Dato' Mokhtar satisfactorily and effectively. Unfortunately PC Sani performed miserably in the witness box. Throughout the whole of his testimony, unlike Manaf's testimony which was punctuated by the words "Saya tidak pasti". PC Sani's testimony was punctuated by what appeared to me to be the uncontrollable words "If it is not in my diary I cannot remember" or words to that effect. It is his evidence apparently that every day during his stay in Tampin with the Minister in the morning the first thing he did was to go to the UMNO office in Tampin to get the programmes for the Minister for the day and these he would note down in his dairy. Throughout his stay in Tampin he did not have the official pocket books but used instead a private black diary book. According to him he would note down only where the programmes were official not otherwise. In cross-examination many times he appeared confused and desperate and it was on such occasions that he blurted out the words "if not stated in my diary I cannot remember where I went". On one occasion also in cross-examination he said in exasperation "I cannot remember anything except what I have written in my diary."

PC Sani tried in his desperation to accuse Dato' Rahman, the Director of CID of forcing him to change his statement "to conform to the statements given by the kampung people and the detainees". When asked he admitted however that he did not know what was said by the kampung people or the detainees. He also tried to implicate the Director of CID by accusing him of using the Quran to get the truth from him and when he refused he said the Director asked him to take the Quran home. He said Insp. Rashid was present. But Insp. Rashid (PW31) said he saw no such thing. He accused the senior police officers of torturing him by using abusive language on him and also kicking him but in another part of his testimony he said however that he was given a blank paper and was asked to sit down at a table. In one part of his testimony he said that Dato' Rahman asked him to change his statement to conform to the statement of the kampung people and the detainees. In another part of his testimony he said that Dato' Rahman told him it was entirely up to him. Again in one part of the statement he said he was subjected to abusive language and assault by the senior officers; in another part of his testimony he said nobody forced him and that he was not beaten up and his mind was not disturbed.

PC Sani's testimony as a whole consists of so many contradictions and inconsistencies that I can but come to the conclusion that he is hardly a witness to be believed. He was indeed a pitiful figure in the witness box. He was so unsure of so many things that it appeared to me he was completely lost on many occasions - fumbling over his pocket books and black dairy whenever he was asked about any event during his stay in Tampin. In my opinion PC Sani is a pathetic case of misguided loyalty. His memory completely failed him of events other than those which he appeared to have learnt by heart. His utter confusion in the witness

box was, in my opinion, because of his inability to expand the bits and pieces which he had been asked to memorise. Thus his frequent explosions whenever excited "If not stated in my dairy I cannot remember". Significantly what was noted in his black dairy for 13 April 1982 were only the following events -

7.30 p.m. - Hindu Temple Gemas

9.00 p.m. - Ceramah in Geduk

8.00 p.m. - Bukit Jalur Felda.

One would not fail to notice that if according to him he took down the programmes of the Minister in the morning the last item written down in his dairy for 13 April 1982, that is, "8.00 p.m. Bukit Jalur Felda" was in all probability an afterthought, because it was scheduled for 8.00 p.m. but appeared after the item for 9.00 p.m.

My conclusion with regard to the testimony of PC Sani is that his evidence pertaining to the alibi after the ceramah at Masjid Geduk is completely false and fabricated. His version of how he was interrogated by the senior police officers in Bukit Aman cannot equally be true.

An outstanding feature in the alibi of Dato' Mokhtar is the fact that apart from the principal witnesses which I have already dealt with like Manaf (DW17), Rashidi (DW19), Suroya (DW22), Antony Sim (DW5), Tan Chin Boon (DW20) and PC Sani (DW27) whose credibility rating I consider to be extremely low, the other supporting witnesses would on the other hand appear to have close connection with Dato' Mokhtar in some form or other and can therefore be regarded to have a good motive not to tell the whole truth as respects events which were in themselves true. Thus one cannot fail to notice the somewhat abnormal or unusual care and attention given to mention the exact times of arrivals and departures or the closing of functions as seen in testimonies covering the Seri Kendung ceramah, the Kursus Wanita Palong Lima, the basketball tournament in Gemas, the Masjid Geduk ceramah and the football coaches' course closing ceremony, Tampin where times were vital for the alibi.

For the Seri Kendung ceramah Cikgu Ahmad Arshad (DW12) gave evidence. He is a teacher actively involved in UMNO politics since 1948 in whose house the ceramah was held. For the Kursus Wanita Palong Lima Putik Zaleha and Zawiyah (DW3, DW4) gave evidence. They were both Ketua UMNO Wanita of the respective Cawangan. For the basketball tournament in Gemas we have the testimony of Y.B. Mohd. Salleh whose position in the Exco Negeri Sembilan was made possible only by the vacancy created by the appointment of the late Dato' Taha to the post of Speaker of the Assembly. Y.B. Mohd. Salleh was and is the deputy chief of the UMNO Bahagian Tampin and therefore second only to Dato' Mokhtar in the heirarchy of the UMNO Division. The Geduk ceramah was supported materially by the testimonies of Cik Bon (DW8) and Hj. Bulat (DW13). Cik Bon was very active in Wanita UMNO Cawangan Geduk of which Cikgu Abdullah Ambik was the chief. Hj Bulat was also active in UMNO politics in Geduk and he is also the cousin of Cikgu Abdullah Ambik. The evidence on the football coaches' course closing ceremony in Tampin was supported substantially by the testimony of Suroya (DW22) and Nawawi (DW21). I have already dealt with Suroya. As regards Nawawi (DW21) it is his own evidence that he is not only an UMNO member in Tampin but actively assisted in the election campaign of Dato' Mokhtar and was also at the material time the treasurer of the Football Association Tampin of which Dato' Mokhtar was president. As regards Anthony Sim (DW5) as I pointed out earlier his evidence of sleeping in Dato' Mokhtar's rented house in Tampin was demolished by the evidence of Rashidi (DW19). At the material time Anthony Sim was assisting the accused in the election campaign in Tampin. As regards Tan Chin Boon, a sawmiller, he is a close friend of Dato' Mokhtar as clearly seen in his own evidence as well as in the evidence of PC Sani (DW27).

Although there is no evidence that he is actively involved in politics with Dato' Mokhtar he admitted in his own testimony that for the purpose of the election in 1982 he provided two cars to be used during the campaign by Dato' Mokhtar and went to see Dato' Mokhtar on 14 April 1982 to enquire whether a third car was necessary. There is also evidence from PC Sani that whenever the official car of Dato' Mokhtar was under repair, Tan would provide a substitute car - also a BMW - for use of the Minister.

It is not surprising therefore that right through the testimonies of these witnesses there is this fixed and emphatic assertions of exact times of arrivals and departures where times were vital for the alibi. I regard this as contrary to ordinary human conduct in relation to memory of events long gone.

The second part of the defence is the attack on Atun's (PW18) evidence. The basis of the attack is the same as that proposed at the end of the prosecution case, that is that Atun is not a witness to be believed when he said he saw five people near a white car in Gan Kee Estate on the night of 13 April 1982. The attack on Atun's evidence now is based however on what the defence contends to be "new evidence" in the form of the testimony of ASP Ibrahim (DW23). ASP Ibrahim said that as a Special Branch officer he interviewed Atun who informed him that he could identify only three out of the five people that night at Gan Kee Estate. According to ASP Ibrahim, Atun identified Abdullah Ambik, Aziz Tumpuk and Aziz PJK. According to ASP Ibrahim Atun did not identify Dato' Mokhtar.

The assessment of ASP Ibrahim's testimony must be in the light of his own admission of his relationship with Dato' Mokhtar. He admitted close connection with Dato' Mokhtar and one Abdul Hadi, also a member of Ahli Jawatankuasa UMNO Tampin. Looking at his evidence and that of Y.B. Mohd. Salleh (DW14) it would seem clear that he was also quite close to Y.B. Mohd. Salleh as the latter preferred to give information to him rather than to the OCPD Tampin, ASP Bahadun (PW17) despite the fact that he knew that the OCPD was more directly connected with the investigation of this case. ASP Ibrahim also admitted that he was a poker "Kaki" of the Minister. Looking at his evidence on the story of Atun it is clearly noticeable that the story of Atun as given to ASP Ibrahim does not substantially differ from the story of Atun in the main trial. The only difference lies in the non-identification of Dato' Mokhtar as allegedly told to ASP Ibrahim. Considering all the circumstances of the case I do not consider it justified to reject the story of Atun (PW18) as given in his own testimony solely on this so-called new evidence of ASP Ibrahim.

The third part of the defence of Dato' Mokhtar is that the Court should review the evidence of Sudin (PW22) and the evidence of Datin Norsiah (PW23) in the light of another new evidence in the form of the testimony of Batumallai (DW10), ASP Ibrahim (DW23), the testimony of Y.B. Mohd. Salleh (DW14) and the RTM film (D125).

According to Batumallai he was at the funeral of the late Dato' Taha and he heard Sudin mentioning the description of the night caller as a man with a beard and he asked Sudin if he knew that man, whereupon Sudin said he did not know. ASP Ibrahim also testified that at the same funeral he also heard Sudin mentioning the description of the night caller as a male Malay with beard, moustache and sideburn wearing Malay dress and using a Pakistani songkok. The same story is also related by Y.B. Mohd. Salleh. The film (D125) also showed Sudin giving more or less the same description. In my written decision dated 31 December 1982 I already dealt with the discrepancies between their stories and I accepted the explanation given by Sudin and Datin Norsiah as to why they withheld the real description of the night caller until after the arrest of Cikgu Abdullah Ambik. In my view the so-called "new evidence" does not alter the position.

The fourth and fifth parts of the defence of Dato' Mokhtar can be dealt with together. Firstly the defence says the prosecution has not proved beyond reasonable doubt that-

(1) Dato' Mokhtar is the owner of pistol (P88);

(2) the slugs A, A1 and cartridge casings B and B1 came from P88; and

(3) P88 was at all times in the custody and control of Dato' Mokhtar during the material period.

I did not think there is any doubt in the pathologist's (PW3) evidence that the bullet that went to the brain of the late Dato' Taha and the bullet that went through his heart (i.e. A, A1) could singly cause his death.

As regards ownership of P88 the defence contends that the handwritten part of the gun licence (P16) has not been proved and therefore hearsay evidence and therefore there is no proof that the particulars in P16 refer to Dato' Mokhtar. The defence also contends that nowhere in P16 there appears any signature of Dato' Mokhtar. In my written decision dated 31 December 1982 I also dealt with P16 and came to the conclusion that P16 and its contents provided satisfactory proof of ownership of the gun (P88). The absence of the signature of the accused in P16 is only because there is no provision for any signature in a gun licence.

As regards the contention that the prosecution has not proved beyond reasonable doubt that the slugs A and A1 came from P88 this question has also dealt with in my written decision dated 31 December 1982. The testimony of Mr. Fassnacht playing on the words "splintered" and "dented" could not in any way cause any doubt on this point. In any case there is no evidence to suggest that there was any break in the chain of evidence with regard to A and A1. With regard to casings B and B1 the defence evidence in fact reenforces the prosecution case when ASP Ibrahim (DW23) testified that he saw OCPD Bahadon (PW17) Picked up the casings and put them into an envelope.

Finally the question of custody and control of P88 during the material period. In my written decision dated 31 December 1982 I regarded P119 as part of the basis for coming to the conclusion that P88 was at all times in the custody and control of Dato' Mokhtar during the material period. In his testimony during the defence evidence Dato' Mokhtar tried to explain P119. The gist of his explanation can be summarised as follows. The answers he gave in P119 were only to the best of his knowledge and that at times during the material period he only assumed that the gun was with him by the "weight and feel" of the clutch bag in which he had put P88. Looking at the evidence as a whole his explanation of P119 cannot hold water. Firstly he admitted that he had applied to purchase the gun for self-protection and that he was generally careful of its custody. This appeared in P119 as well as his evidence. From his evidence it would seem clear that he would be more conscious of the custody and safety of his gun during the election period. It is also in PC Sani's testimony that whenever he accompanied the Minister to ceramah in a mosque or temple or like places he would be asked to take charge of the clutch bag and was informed by the Minister to be careful as the clutch bag contained his gun. It would appear also the intention of the defence to create some doubt on the continuity of custody and control of the gun after Dato' Mokhtar returned home on the night of 13 April 1982. He said he placed the clutch bag on the table near the window. It is part of the defence evidence (although half-heatedly pursued) that many people had free access to the house at 513, Taman Clonlee, Tampin and it would be possible for someone to take the gun away and put it back on the table without the Minister knowing. There are a lot of loopholes on this proposition. Firstly it is in the evidence of PC Sani that the window was always closed probably because the room was air-conditioned. Secondly

this proposition is contrary to what was said in P119 because in that statement Dato' Mokhtar categorically said that whenever he sleeps he puts his gun under his pillow. Thus his story of putting the clutch bag containing the gun carelessly on the table near the window can only be a newly invented story. Thus looking at the evidence I cannot see how the gun (P8) could have been taken out of the custody or control of Dato' Mokhtar at any time during the material period.

Whenever any question on the gun was put to him it would appear to me that Dato' Mokhtar was always evasive. A clear example to this is the explanation why the licence (P16) is a replacement copy. He testified that he had lost the original licence. But when confronted with the original of his own letter (P123) applying to change the address in the licence he admitted it was an error on his part. When confronted with Mr. Gee's evidence he stated that if what the chemist said is true about the gun and the slugs and the casings then it would be a "mystery" to him.

Finally, there is no evidence to suggest that the gun P88, Walther automatic pistol No. 527145 is not the same gun as the pistol referred to in the licence (P16) and the statement (P119).

There is only one other issue left and this is in respect of the question of the existence or otherwise of a friction between Dato' Mokhtar and the late Dato' Taha. The defence contends that the defence evidence has completely demolished any doubt as to the non-existence of a friction between Dato' Mokhtar and the late Dato' Taha. Quite the contrary it is my opinion that the existence of a strained relationship between the two is reenforced by the defence evidence.

It is of course the defence story that the late Dato' Taha was in no way a threat to the political future of Dato' Mokhtar. But in the evidence of Dato' Mokhtar himself it is clear that he felt disappointed when he was informed that the names nominated by the Jawatankuasa Bahagian Tampin were rejected by the party leadership who instead had chosen the late Dato' Taha to be the candidate for the Gemencheh State seat. Y.B. Mohd. Salleh was clearly embarassed and evasive when confronted with the question of a memorandum sent by the UMNO Bahagian Tampin to the Menteri Besar of Negeri Sembilan for the removal of the late Dato' Taha from the State Exco. Y.B.Mohd. Salleh said that he did not know of any such memorandum although he admitted that he was the deputy head of UMNO Bahagian Tampin and admitted reading all minutes of the meeting of the Bahagian after Dato' Mokhtar took over control of the Bahagian from the late Dato' Taha in 1980. Y.B. Mohd. Salleh however agreed that there was a memorandum to put him into Exco but disagreed that it was to replace the late Dato' Taha. Y.B. Mohd. Salleh in fact obtained his appointment as Exco member only when the late Dato' Taha was appointed Speaker of the Assembly thereby vacating his seat in the Exco. Looking at the evidence in their proper perspective it would seem clear to me that the late Dato' Taha was an obstacle to the expansion of power and influence of Dato' Mokhtar. The late Dato' Taha was also a threat to Cikgu Abdullah Ambik who was one of the three nominated by the UMNO Bahagian Tampin but rejected by the party leadership in favour of the late Dato' Taha. The late Dato' Taha was also an obstacle to Y.B. Mohd. Salleh for only after the late Dato' Taha vacated his seat in the Exco to become the Speaker of the Assembly was the seat available to Y.B. Mohd. Salleh.

The rivalry for the control of UMNO Bahagian Tampin was obviously based on practical considerations. UMNO Bahagian Tampin is one of the largest UMNO Divisions in West Malaysia. The Federal constituency of Tampin of which Dato' Mokhtar is the MP also encompasses four State constituencies. UMNO Bahagian Tampin was among the first UMNO Divisions to have its own building.

Both Dato' Mokhtar and Y.B.Mohd. Salleh testified that when the Jawatankuasa Bahagian Tampin discussed the nominations for Gemencheh State constituency for the 1982 general elections, Dato' Mokhtar mentioned (or suggested) the name of the late Dato' Taha whereupon according to Dato' Mokhtar, someone in the hall said "cukup". Y.B. Mohd. Salleh said it was Cikgu Kamaruddin seated next to Dato' Mokhtar who said "cukup" followed by general voices from the meeting saying "cukup" whereupon Dato' Mokhtar did not proceed any further with the matter. This story is difficult to accept as true because it is difficult to accept as probable that anyone in the Jawatankuasa Bahagian would be impertinent enough to say "cukup" to the suggestion of Dato' Mokhtar (if in fact he made one) for Dato' Mokhtar then was not only the chief of the Bahagian but also a Federal Minister, a member of the UMNO Supreme Council and a member of Exco of UMNO Youth. In any case the word "cukup" could not have applied to the Gemencheh Constituency because there is evidence that five names had in fact been nominated for Kota whereas Gemencheh had only three names nominated.

Because the late Dato' Taha was not without support it is reasonable to conclude that the late Dato' Taha must be eliminated before anyone can have absolute control of Tampin. A closer look at the background would justify this conclusion. After graduating from the University of Malaya Dato' Mokhtar was employed as a research officer in palm oil in Banting. He became an UMNO member of Morib in 1968 and soon he became also the Vice-President of that Cawangan. The President of UMNO Morib at that time was none other than Dato' Harun Idris. With Dato' Harun Idris at the helm in Morib no one could dream of taking over control of Morib at that time. But Dato' Mokhtar was lucky because in 1972 the late Tun Razak nominated him to be the candidate for the Federal constituency of Tampin in a by-election. After being elected Dato' Mokhtar rose fast. Because the late Dato' Taha had been in virtual control of the UMNO Tampin Division for nearly 20 years it was only natural the arena was set for the conflict between the two politicians. Dato' Mokhtar finally gained control of Tampin in 1980. Even the most naive of politicians should not fail to notice that the control of UMNO Tampin Division was indeed a coveted prize for the eventual control, direct or indirect, of probably the State of Negeri Sembilan itself.

Thus in my opinion the existence of friction between Dato' Mokhtar and the late Dato' Taha is fully reenforced by the defence evidence.

Looking at the defence evidence it can be seen that the defence of the first accused is a clever juxtaposition of facts and fiction. The difficulty in assessing the defence evidence in respect of the alibi of Dato' Mokhtar lies in the problem of separating the truths from untruths. Nobody can dispute that there was a basketball tournament in Gemas on 11 April 1982 or that there was a ceramah at the Hindu Temple in Gemas and at the Geduk mosque on 13 April 1982. By playing on the approximation of times upon actual events and the creation and fabrication of fictitious events upon actual events the defence story could well have made a formidable alibi. But unfortunately in this case the facade of the alibi crumbled and disintegrated as more and more witnesses took their stand in the witness box. But credit must be given where it is due. The murder of the late Dato' Taha was intelligently planned, neatly executed and almost became a perfect crime.

There are a number of defence witnesses whom I have not dealt with in detail in this Judgement. Some of them may appear unshaken but as stated by the Federal Court in *Muniandy & Ors. v. PP* [1966] 1 MLJ 258, the fact that the witnesses were unshaken in cross-examination is not *per se* an all-sufficient acid test of credibility. The inherent probability or improbability of the fact in issue must be the prime consideration.

To summarise, the misconception of the defence lies in my view in failing to look at the prosecution case in its proper perspective. The Prosecution case does not depend solely or singly on the evidence of Atun bin Ali (PW18) or the evidence of Sudin bin Shariff (PW22) or Datin Norsiah (PW23) or the evidence of Mr. Gee (PW9) or the evidence of the pathologist (PW3) but the sum total of their evidence together with the evidence of the other prosecution witnesses.

After considering all the evidence adduced by the prosecution and the defence my conclusions are as follows:

(1) It is my finding that the evidence of alibi of both the accused is completely false and fabricated;

(2) The voluntariness of the cautioned statement of Rahmat Satiman (P101) is affirmed;

(3) The truth of the cautioned statement of Rahmat Satiman (P101) is affirmed in so far as it relates to both the accused;

(4) The veracity of the evidence of Mr. Gee stands unchallenged and that means slugs A and A1 either of which singly could have caused death of the late Dato' Taha came from the Walther automatic pistol (P88) belonging to Dato' Mokhtar;

(5) Dato' Mokhtar was in custody and in control of P88 at all material times;

(6) The defence evidence as a whole has not succeeded in creating any doubt on the truth of the prosecution story;

(7) It is an inescapable conclusion that the charge has been proved beyond reasonable doubt against both the accused. Any other finding would be contrary to the weight of evidence.

I accordingly enter a verdict of guilty against both accused.

Also found at [1983] 1 CLJ 138